

AN EXACT  
ACCOUNT  
OF THE  
TRIAL

BETWEEN

Sr. WILLIAM PRITCHARD, K<sup>t</sup>.

And Alderman of the City of *London*, Plaintiff,

AND

THOMAS PAPILLON, Esq; Defendant;

In an Action upon the Case

At the Sessions of *Nisi prius* holden for the Court of  
King's Bench at the *Guild-hall* in the City of *London*,  
on *Thursday* the 6<sup>th</sup> of *November*, 1684.

In *Michaelmas Term*, in the 36<sup>th</sup> Year of the Reign  
of King *Charles* the Second.

Before Sir GEORGE JEFFERIES, K<sup>t</sup>.  
and Baronet, then Lord Chief Justice of  
the said Court of *King's Bench*.

To which is added, The MATTER of FACT relating to  
ELECTION of SHERIFFS, as it was printed in the Year 1682.

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L O N D O N,

Printed and sold by Richard Janeway in *Queens-head-Court* in *Pater-*  
*Noster-Row*. MDCLXXXIX.

A C C O U N T

T R A N S A C T I O N S

OF THE

AMERICAN

REPUBLICAN

PARTY

IN

THE

STATE

OF

NEW

YORK

FOR

THE

YEAR

1880

AND

FOR

THE

YEAR

1881

AND

FOR



Pasche xxxvi<sup>to</sup> Car. Secundi Reg.

London II. **W**ilhelmus Pritchard Miles nuper Major Civit. prædict. querit de Thoma Papillon in Custod. Marem, &c. pro eo videlicet quod cum duodecimo die Februarii Anno nostri Domini Caroli Secundi nunc Regis Angliæ, &c. tricesimo quinto ipsem idem Wilhelmus Pritchard ac antea & abinde pro separat. menses ex tunc prox. sequend. exitit, Major Civitat' London. prædict. in Officium Majoratus illius debito modo elect. præfekt. & jurat. ac secundum Consuetudinem Civitat. London. prædict. a tempore cujus contrar. memoria hominum non existit in eadem usitat. & approbat. Officium suum Majoratus illius indies intendere debuit pro assiduam diligent. ipsius Wilhelmus in regimine Civitat. illius pro ipsum secundum debitum Officii sui prædict. exequend. & performand. ad honorem & dignitat. ad Officium illud spectant. & pertinen. prædictus tamen Thomas existens unus de Commitat. Civitat. prædict. & sub regimine dicti Wilhelmi virtute Officii sui prædicti præmissor. non ignarus sed machinans & false, ac malitiose, invidens felici statui ipsius Wilhelmi in Officio suo prædict. necnon ipsum Wilhelmum in executionem Officii illius minus juste inquietare & disturbare prædicto duodecimo die Februarii Anno tricesimo quinto superdicto idem Thomas Papillon pro vexatione præfat. Wilhelmo adhibend. (eodem Thoma ad tunc non habente aliquam legitimam vel probabilem Causam Actionis versus ipsum Wilhelmum) false & malitiose prosequunt fuit extra cur dicti Domini Reg. coram ipso Rege nunchit. scilicet apud Westmon. in Com. Middlesex adtunc & adhuc tent' existens quoddam Breve ipsius Dom. Reg. de alias Capias versus ipsum Wilhelmum per nomen Wilhelmi Pritchard Militis adtunc Coronator Civitat' London. præd. direct' per quod quidem Breve idem Dominus Rex nunc eidem tunc Coronatori præcepit quod capet ipsum Wilhelmum Pritchard si invent' foret in Civitat' London. præd. & ea salvo custodiret, ita quod herent Corpus ejus coram Domino Rege apud Westm. die cur' prox. post quindenum Pasche ex tunc prox. sequend. ac respondend. præfat' Thomæ Papillon pre nomen Thomæ Papillon Armiger de placito transgres. & quod idem tunc Coronator haberet ibi tunc breve illud. Et prædictus Thomas Papillon ex ulteriori nequitia & malitia sua præcogitat' versus ipsum Wilhelmum postea & ante retorn' Brevis prædicti scilicet vicesimo quarto die Aprilis Anno tricesimo superdicto apud London. præd. videlicet in Parochia Sanctæ Mildredæ Virginis in Pulletria in Warda de Cheap. London. prædicum Breve de alias Capias cuidem Jo-

hami Brome Gent. adtunc Coronator Civis London præd. existem delibera-  
vit exequend. ac adtunc & ibidem apud Wilhelmum adtunc Major' Ci-  
vitat' London præd. ut præferi' existem prætextu Brevis illius pro Corpus  
suum capi & arrestari ac in Prisonsa sub Custod. ejusdem tunc Coronator per  
spatium sex horarum ex tunc prox. sequem detineri malitiose & minus  
juste procuravit in vituperator' derogation' & vilipendium prædici Wilhelmi  
& Officii Majoratus ipsius Wilhelmus præd. necnon ad damnum prejudicium  
& gravamen ipsius Wilhelmi manifest' ubi revera & de facto prædictus  
Thomas Papillon prædico tempore captionis arrestationis & detentionis ipsius  
Wilhelmus in Prisonsa sit ut præferi' fact' non habuit aliquam justam vel  
probabilem causam Actionis versus ipsum Wilhelmum in Premis præd. unde  
idem Wilhelmus dic' quod ipse deteriorat' est & damnum habet ad valent'  
decem mille librarum & inde produc' sertam, &c.

Die

*Die Jovis 6° Novemb. Anno Dom. 1684. Mich.  
Ter. 36° Car. 2°. B.R.*

At the Session of *Nisi prius* for the City of London, held at *Guild-hall*.

*Pritchard verſus Papillon.*

London II. **S**IR William Pritchard, late Lord Mayor of the City of London, having in *Easter Term* last brought an Action upon the Case, for falsely, maliciously, and without probable Cause, procured him to be arrested and imprisoned in his Mayoralty, against *Thomas Papillon, Esq;* The Defendant pleaded not Guilty, and thereupon Issue being joyned, it came this day to be tried before the Lord Chief Justice *Jeffreys*; and the Jury sworn to try this Cause were these,

<i>Bartholomew Ferryman,</i>	{	<i>Joseph Baggs,</i>
<i>Thomas Blackmore,</i>		<i>Daniel Chandler,</i>
<i>Thomas Symonds,</i>	{	<i>John Reynalds,</i>
<i>William Wharton,</i>		<i>John Allen,</i>
<i>John Green,</i>		<i>Joseph Caine, and</i>
<i>Thomas Amy,</i>		<i>William Withers, jun.</i>

Mr. *Mundy*. May it please your Lordship and you Gentlemen of this Jury, Sir *William Pritchard*, Knight, late Lord Mayor of the City of London, is Plaintiff, and *Thomas Papillon, Esq;* is the Defendant: And this, Gent. is in a special Action upon the Case, wherein the Plaintiff does declare, That whereas the 12th of *February* in the 35th Year of this King, and before and after for several Months then next ensuing, he was Mayor of the City of London, being duly elected and sworn into the Office of Mayoralty of the said City, and according to the Custom of the said City time out of mind, he ought daily to attend the said Office in the diligent Government of the said City, according to the Duty of his said Office, which he was to execute to the Honour and Dignity belonging thereunto; That the Defendant, *Thomas Papillon*, being one of the Commonalty of the said City, and under the Government of the Plaintiff, by virtue of his Office aforesaid, not being ignorant of the Premises, but contriving, and falsely, and maliciously envying the happy Estate of the Plaintiff in his said Office; as also unjustly to disturb the Plaintiff in the Execution of his said Office, the said 12th day of *February* in the 35th Year aforesaid, the Defendant for vexation to the Plaintiff, not having any lawful or probable Cause of Action against the Plaintiff, falsely and maliciously did prosecute the King's Writ of *alias Capias* out of the Court of King's Bench against the Plaintiff, by the Name of Sir *William Pritchard*, Knight, directed to the then Coroner of the City of London; by which Writ it was commanded the said Coroner to take the Plaintiff, if found within the said City, and safely keep him, so as to have his Body before that Court at *Westminster* upon Wednesday next, after 15 days of *Easter* then next following, to answer the now Defendant in a Plea of *Trespas*: And that the Defendant of his further Malice against the Plaintiff, afterwards and before the return of the Writ, to wit, upon the 24th day of *April* in the 35th Year aforesaid, at London, to wit, in the Parish of *St. Mildred the Virgin*, in the *Poultry*, in the Ward of *Cheap*, London, delivered the said Writ of *alias Capias* to one *John Brome*, Gent. then being Coroner of the said City, to be executed; and then and there the Plaintiff, then being Mayor of the said City, by virtue of that Writ, maliciously and unjustly did procure to be taken, and arrested, and detained in Prison under the Custody of the said Coroner for the space of six hours, to the Disgrace and Scandal of the Plaintiff and his said Office; as also to the manifest Damage, Prejudice, and Grievance of the Plaintiff: Whereas in Truth and in Fact the Defendant at the time of the taking, arresting, and detaining of the Plaintiff in Prison, as aforesaid,



said, had not any just or probable Cause of Action against the Plaintiff in the Premises, whereby the Plaintiff says he is injured, and which he lays to his Damage 10000*l*. To this the Defendant has pleaded Not Guilty. If we that are of Counsel for the Plaintiff shall prove this matter unto you, Gentlemen, that we have laid in the Declaration that has been opened unto you, you are to find for the Plaintiff, and I hope will repair him in Damages for this Affront and Injury.

Mr. *Attorn. Gen.* May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case for the Plaintiff; and this Action is brought, Gentlemen, to vindicate the Honour of the Chair from such Affronts as these, which in no Age, till of late days, our Times of Faction and Confusion, it ever met with; That by a Person that is a Citizen of London, and one of the Commonalty, that ought to have paid Submission to the Lord Mayor as his Chief Magistrate, and was bound so to do by his Oath as a Free-man should, without Cause of Suit, arrest the Lord Mayor of the City. That there was no probable Cause, is evident by his not proceeding in the Action that he had thus brought. But, Gentlemen, we shall shew you in the course of our Evidence, that there lay a further Malice in this Case, and that there was a Design in it against the Government. For we shall give you Evidence that this Design was laid to carry on the great Plot against the Lives of the King and his Brother, and for the Subversion of the Government. For they contrived it so, that they would imprison the Mayor, and then, thought they, the Loyal Citizens will interpose to rescue him, and then the Party should rise to assist the Officer, he having the Countenance of Authority, and being in the Execution of the King's Writ (especially if it be considered then who was Coroner) and so a publick Commotion would be made, a general Mutiny, and that would be a fit Opportunity in the Confusion of the City, wanting its Chief Governor, of doing what they designed. Gentlemen, we shall prove all that is laid in the Declaration; and likewise that the End of this Business was to have had a Commotion for the accomplishing their great Conspiracy as has been opened. That Sir William Pritchard was arrested in his Mayoralty, I suppose, will be agreed, or else we shall prove it.

Mr. *Ward.* Yes, yes, we agree it.

Mr. *Sol. Gen.* Then we will go on and prove the manner of it. Swear Mr. *Gorges*, and Mr. *Keeling*, (which was done.) Mr. *Keeling*, pray will you tell my Lord, and the Jury, were you made a special Bayliff to arrest Sir William Pritchard when he was Lord Mayor, and what did you do upon it? tell all you know of it, and what was designed by it.

Mr. *Keeling.* My Lord, all that I do know of it is this: It was upon the 24th day of April, I have the Warrant here to shew, I met with Mr. *Goodenough* at Mr. *Russell's* the Cook in *Ironmonger-Lane*, and several others were there; and I went away a little while and came again: While I was gone from them, they put my Name into the Warrant, and upon that Warrant I did arrest Sir William Pritchard, who was then Lord Mayor, at the Suit of Mr. *Thomas Papillon*, I suppose this is the Gentleman (pointing to the Defendant) I had no Order for it from Mr. *Papillon*, nor ever spoke with him about it; but I had Order from the Coroner, who upon the arresting of him took my Lord Mayor into his Custody.

Mr. *Attorn. Gen.* Where was my Lord Mayor then?

Mr. *Keeling.* At Grocers-Hall.

Mr. *Attorn. Gen.* Was that the place he kept his Mayoralty in?

Mr. *Keeling.* Yes, it was so.

Mr. *Sol. Gen.* What was he doing when you arrested him?

Mr. *Keeling.* There was some Disturbance upon it among the Officers and People there. The Coroner came up to him and said, Sir, I have a Writ against you, I pray you would please to give an Appearance at the Suit of Mr. *Thomas Papillon*, and another at the Suit of Mr. *John Dubois*, and some words there past between him and the Coroner; and my Lord Mayor refusing to give any Appearance, the Coroner Mr. *Brome* bid us execute our Warrants, upon which I came up to my Lord Mayor and touched him upon the Shoulder, and said, I arrest you at the Suit of *Thomas Papillon*, Esq; and one *Ferdinando Burley* arrested him again at the Suit of Mr. *John Dubois*.

Mr. *Attorn. Gen.* What did you do with him when you had arrested him?

Mr. *Keeling.* The Coroner dismiss us, and as I take it, carried him home to his House.

Mr. *Att.*

*Mr. Att. Gen.* What Instructions had you what to do in case he made any Resistance, and did not submit to the Arrest ?

*Keeling.* I know of no Instructions about any such thing.

*Mr. Sol. Gen.* Who was by, pray, when Orders were given you to arrest my Lord Mayor ?

*Keeling.* Both the *Goodenoughs*.

*Mr. Att. Gen.* He, in the Proclamation you mean, and his Brother ?

*Keeling.* Yes, *Richard* and *Francis Goodenough*.

*Mr. Sol. Gen.* And who else, pray ?

*Keeling.* Several that I did not know.

*Mr. Att. Gen.* Can you remember any Body besides the *Goodenoughs* in particular ?

*Keeling.* There was one a Tallow-Chandler, and a great many that I did not know.

*Mr. Sol. Gen.* How many do you think there were ? and where was it ?

*Keeling.* I believe there were about thirty or forty, and it was at *Russell's* the Cooks in *Ironmonger-Lane*.

*Mr. Att. Gen.* Did they all come along with you to *Grocers-Hall* to arrest my Lord Mayor ?

*Keeling.* No, my Lord, they did not.

*Mr. Sol. Gen.* Did any of them, and which pray ?

*Keeling.* Sir, I will tell you who did come to my Lord Mayor's. There was the Coroner, *Francis Goodenough*, *Ferdinando Burley*, and my self : And after my Lord was arrested, the Coroner bid us be gone, and he would look after my Lord Mayor.

*Mr. Sol. Gen.* Whither did you go after that ?

*Keeling.* I went to Sir *Harry Tulse's* directly.

*Mr. Att. Gen.* Did not you expect an Opposition ? and had you not some discourse what you should do in case there was an Opposition ?

*Keeling.* No, I cannot tell any thing of that.

*Mr. Att. Gen.* You say, there was a Meeting, or Consult, at *Russell's* of forty People ; Had you not there some Consultation what was to be done if my Lord Mayor did not obey the Arrest ?

*Keeling.* I do not remember any thing about that at that time.

*Mr. Att. Gen.* Was there at any other time before ? or did you hear any of those People discourse the *Goodenoughs*, or any of them, what they would have done in case they were resisted ?

*Keeling.* I do not remember any Discourse of any such thing, before or after ?

*L. Ch. Just.* Pray, *Mr. Keeling*, let me ask you a Question or two. Were you ever employed by the Coroner to be a special-Bailiff to arrest any Body before this time you speak of, that you arrested Sir *William Pritchard* ?

*Keeling.* No, my Lord, I never was.

*L. Ch. Just.* Then, pray recollect your self, who were at that Meeting, when-as you say, your Name was put into the Warrant for this Arrest ?

*Keeling.* My Lord, when I went away for a little while, I left these Persons particularly that I did name, the two *Goodenoughs*, and one *Burton*, I think, and one *Crompton*, and that Tallow-Chandler ; there were to the number of thirty or forty that I did not know their Names.

*L. Ch. Just.* But, pray, how came you to be employed in this Service then ? Were you a Tradesman in Town then ?

*Keeling.* Yes, in *Wapping*.

*L. Ch. Just.* Good now, how came you to be employ'd in arresting my Lord Mayor more than any other of those thirty or forty that you say were there then ?

*Keeling.* I went there among them, but did not know then that I should be concerned in this Business ; and I went away a little while, and when I came back, they told me, that my Name was put into the Warrant.

*L. Ch. Just.* Pray tell us the whole Story, How you that were a Tradesman at *Wapping*, should come to be employ'd as a Bayliff to the Coroner of *London* to arrest my Lord Mayor, there must be some particular End in it ?

*Mr. Att. Gen.* *Mr. Keeling*, tell the Court and the Jury the whole Story, and what it was that brought you into this.



*Keeling.* My Lord, Mr. *Goodenough* told me I must be concerned.

*L. Ch. Just.* Ay, prethy tell us what *Goodenough* desired you to be concerned in?

*Keeling.* Upon my coming back to the Company that was at *Russell's*, Mr. *Richard Goodenough* told me, I must be concerned in the Business of arresting my then Lord Mayor, Sir *William Pritchard*: Said I to him, Mr. *Goodenough*, this is foreign and remote to my Business, to be concerned in such a Matter as this, it will seem very strange for me to do it. He prest it upon me to do it; and, says he, if you will not do it, you will be a Man look'd ill upon, and it will be taken strangely from that Party; he meant, I suppose, the Discontented Party, the Faction, or what you please to call it, that were not contented with the administration of the Government in the City at that time; and he urged it upon me with a great many Arguments. I opposed it with much vigour a good while, but at last he prevailed upon me to go along with the Coroner; and *Frank Goodenough* his Brother said he would go with me, and he did so; and we came and arrested my Lord Mayor, as I told you before.

*L. C. Just.* Where did Mr. *Goodenough* prest you to be concerned in this Business, as you say?

*Keeling.* At Mr. *Russell's* a Cooks in *Ironmonger-lane*.

*L. Ch. Just.* How came you thither?

*Keeling.* He sent me a Letter to meet him there. He was at me before to be concerned in it, but I did not comply with him in it. Mr. *Richard Goodenough* it was, and Mr. *Ashurst*, I think it was Alderman *Cornish's* Son-in-Law was by.

*L. Ch. Just.* Was *Nelkrop* there?

*Keeling.* No, my Lord, he was not there, but they did not proceed then, because my Lord and his Brethren were gone out of Town to wait upon the King, I think; And this was six weeks or two months before this Meeting at *Russell's*.

*Mr. Sol. Gen.* Pray, Mr. *Keeling*, recollect your self. Had you any discourse with *Goodenough*, or any body else, what the Consequence of such an Arrest would be?

*Keeling.* They told me, my Lord Mayor, and Court of Aldermen, had made an ill Return to the *Mandamus's* that were served upon them for the swearing of Mr. *Papillon* and Mr. *Dubois* Sheriffs, and therefore Mr. *Papillon* and Mr. *Dubois* had good Cause of Action against them; and *Goodenough* said, he had order from them to Arrest my Lord Mayor upon an Action, and desired me to be concerned.

*Mr. Sol. Gen.* But pray remember what you said before Mr. *Keeling*, Why should the discontented Party, as you call them, be concerned, and be Angry with you if you did not arrest my Lord Mayor?

*Keeling.* The particular Argument that he used with me to perswade me to it, was this, That I having a Trade and Dealing among that sort of People, they would think ill of me I did not do it.

*Mr. Sol. Gen.* But why should the Party be angry with you, if you were not a Bay-liff, to Arrest my Lord Mayor at the Suit of Mr. *Papillon*.

*Keeling.* I did not know the Reason of their Anger, he might have something in his Head that he did not reveal to me. But that was the Argument he used, The Party would think ill of me.

*Mr. Serj. Maynard.* If you have done with this Witness, I would ask him a Question. You say, Sir, that *Goodenough* told you, the Discontented Party would be angry with you if you did not do it? Upon your Oath, was the Discontented Party named?

*Keeling.* No, Sir, but that Party of which Mr. *Goodenough* and I then was, and they were the Discontented Party, I think, for they were so discontented, that they would have killed the King and the Duke.

*Mr. Att. Gen.* That is an Answer, I hope, to your Question, Mr. Serjeant.

*L. Ch. Just.* I think, when he names the *Goodenoughs* to be of the Party, nobody questions but they were discontented.

*Mr. Sol. Gen.* He has explained well enough sure what he meant by the Discontented Party, those that were so discontented that they would have killed the King and the Duke. Those were the Promoters of this Action, and Mr. *Keeling* must engage in it, or they would be displeased. Now, my Lord, we shall call Sir *Henry Tulse*, and Sir *Robert Jefferies*, to shew what the Coroner did.

*Keeling.* I arrested Sir *Henry Tulse* afterwards.

*Then*

*Then Sir Harry Tulse was called.*

*Mr. Ward.* My Lord, we desire Sir *Harry Tulse* may not be sworn, we have an exception to his Testimony.

*L. Ch. Just.* What is your Objection?

*Mr. Ward.* We are informed, he and the rest of the Court of Aldermen have joined their Purse to carry on this Suit, and then, with Submission, he is not a good Witness.

*L. Ch. Just.* Ask him that Question upon a *Voyer dire*.

*Then he was sworn upon a Voyer dire.*

*Mr. Williams.* Pray Sir, is there any Order of the Court of Aldermen to lay out Money for this Cause out of their Joynt Purse, or the Publick City Stock?

*Sir H. Tulse.* Not that we know of.

*Mr. Williams.* Pray Sir, do you know whether Sir *William Pritchard* laid out Money in it, or who else doth?

*Sir H. Tulse.* I cannot give a Positive Answer to that, who layeth out Money upon it, nor do I know of any such Order as you speak of.

*Mr. Ward.* Sir *Harry Tulse*, tho' you know of no such formal Order of the Court of Aldermen, yet is there not some direction by the Court of Aldermen about Expending Monies in a joynt way?

*Sir H. Tulse.* I assure you, Sir, I know nothing of it.

*L. Ch. Just.* Come, he has given a full Answer to your Question, swear him.

*Which was done.*

*Mr. Holt.* Sir *Harry Tulse*, now you are sworn, Pray, will you give an account of what happened about this Matter within your knowledg: Pray tell the whole Story.

*Sir H. Tulse.* My Lord, about four of the Clock in the Afternoon, this Gentleman, and two more, came to me to my own House, and he did arrest me (I mean, Mr. *Keeling*, that was sworn here before me) at the Suit of Mr. *Papillon*; and another of them did arrest me at the Suit of Mr. *Dubois*: Said I to them, I do not know that I owe them, or either of them, a Farthing. But, what must I do? He told me, It was only to give an Appearance. Said I, Gentlemen, I shall consider of that. Then, says he, you must go to my Lord Mayor: Why, where is he, said I? said he, He is in the Custody of the Coroner at his House. Where, said I? He is gone to *Skinners-Hall*, said he. This is well, said I. So I called for my Man to bring my Cloak. Then they told me, If I pleased, they would take my word till to morrow morning, if I would promise to appear. I told them they might do as they pleased. So they left me; and I went first to my Lord Mayor's House, but found him not there; so I went down to *Skinners-Hall*, and there I found my Lord Mayor all alone, and no Alderman, only the Officers. I asked his Lordship how he came there? He told me, he was arrested by the Coroner. I asked him how long he had been detained? and, he said, but a little time: And indeed I think it could not be long, for I met his Coach coming back from *Skinners-Hall* when I went. After that he was detained there till about Eleven of the Clock, or thereabouts. This is all I know of it.

*L. Ch. Just.* What became of the Government of the City all that Time?

*Sir H. Tulse.* There was presently a great Noise all about the City concerning my Lord Mayor's being arrested, and abundance of People were gathered together about the Door, but there came a Company of Souldiers of the Trained Bands, and they kept all quiet. There were great apprehensions of an Uproar. I saw nothing of hurt done tho. And I asked Mr. *Brome* the Coroner, who was by, Am I a Prisoner too, for I was arrested to day by a Warrant pretended to be from you? Says he, I have a Writ against you, and now you are here, I cannot let you go till you have given an Appearance. So I took my self to be detained there with my Lord Mayor in Custody, and staid as long as he staid, and went away with him.

*Mr. Recorder.* Swear Mr. *Wells*, the Common Cryer, and Sir *John Peake*.

*Mr. Wells was sworn.*

*Mr. Recorder.* Mr. Common Cyrer, were you at my Lord Mayor's House when this Hubbub was made? pray tell my Lord and the Jury what you know of it.

*Mr. Wells.* Yes, I was there.

*Mr. Holt.* Then tell what pass.

*Mr. Wells.* I was not in the Hall where my Lord Mayor was, but in another Room by : and the Officers came running in to me, and told me, I must come to my Lord Mayor quickly, for he was arrested by some People. When I came, I found there were none of the Sheriffs Officers that used to arrest People ; but the Room was full of other Persons. My Lord Mayor bid me take the Sword and go along with him, for the Sword-bearer was not just then at hand. I asked his Lordship whither he was going ? The Coroner said, he was his Prisoner, and must go along with him to his House. My Lord Mayor bid me presently send out the Officers to summon a Lieutenancy, which I did. I desired the Coroner and his Men to be gone, said I, cannot you let my Lord alone, and go about your Business ? No, he said, except my Lord would give an Appearance, he must go along with him. I then asked him whither my Lord must go ? He said he had no place but his own House to carry him to, and thither we went ; where when we came, my Lord was put up into a little Room by himself, where were none but my self, and the Coroner, as I remember. My Lord Mayor bid me go and see for Sir *James Edwards* and Sir *Harry Tulse*, and my Lord Mayor that now is, and so I went, but I found they were arrested too before I came.

*L. Ch. Just.* How did my Lord go away from thence ?

*Mr. Wells.* In his Coach.

*Mr. At. Gen.* Were you by when he went away ? and who was there ?

*Mr. Wells.* Mr. *Brome* the Coroner was not there when my Lord Mayor went away, but there was *Goodenough*.

*L. Ch. Just.* Ay, he was in trusty hands upon my word.

*Mr. Attorn. Gen.* The Souldiers prevented the Design, and so they let him go again.

*Mr. Recorder.* Swear Sir *John Peak*. (which was done.) Sir *John*, what can you say to this Business ?

*Sir J. Peak.* My Lord, I had order from the Lieutenancy to raise my Regiment upon the news of my Lord Mayor's being arrested, which I did in a very little time, and came with my Souldiers to *Skinner's-Hall*, where I heard my Lord Mayor was, and prevented any Stir, as it was feared there would have been. But Mr. *Keeling*, I believe can tell something more of the Design than he has spoken ; for I remember at the Trial of the Traitors at the *Old Bailey*, he did say, that after my Lord Mayor was arrested, they did intend something, but their Hearts misgave them when the Regiment was up.

*Lord Chief Just.* That is nothing to this Cause, what he said there, now he remembers nothing of it. Have you done, Gentlemen, or will you call any more Witnesses ?

*Mr. At. Gen.* We rest it here, my Lord, till we hear what they say to it.

*L. Ch. Just.* Come then, what have you to say that are for the Defendant ?

*Mr. Serj. Maynard.* May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case with the Defendant, Mr. *Papillon*. I see, Gentlemen, it is a Cause of great Expectation, and by that means they would make it greater by far than indeed it is in it self. But, I suppose, you who are upon your Oaths to try this Issue, will duly weigh and consider what it really is. Gentlemen, the Record tells you what it is, an Action upon the Case, wherein the Plaintiff declares that the Defendant did arrest him, being then Lord Mayor, without any probable Cause, and out of Malice. Now as to that, Gentlemen, I conceive and think I may appeal to my Lord Chief Justice in it for Direction in point of Law, that my Lord Mayor, if he do mistake in his Office, and do not do that which belongs to him to do, he is as much subject to the Process of Law and Actions, as any private Person in the City of *London*. If he does any Man an Injury, or does that which is not right in his Office by which another Person is grieved, he is liable to the Prosecution of any particular Subject the King has that is so grieved by him. Then they alledge that this particular Action and Arrest thereupon was prosecuted and done out of Malice, and without probable Cause. Now what have they proved of that ? They prove the thing done, that he was arrested at the Defendant's Suit, and that he was kept in Custody six hours. But if we can give you any account of a probable Cause for it, that is sufficient to justify us from this Action. Gentlemen, the Question that you are to try is not, Whether



Whether this Man or that Man were duly chosen into such an Office, but whether there were any probable Cause for the Defendant to contest about the Choice. And herein the Case will fall out to be thus. There was a difference in the City of *London*, as is very well known to every body, about the Choice of Sheriffs for the City, wherein the Defendant was one of the Competitors; there were upon the Nomination and Election in the Hall, a great many more Voices or Suffrages for one than for the other, which was certified to the Court of Aldermen and Lord Mayor, as is usual; but some Contest being, a Poll was demanded and granted, and upon that Poll my Lord Mayor was pleased to declare the Election on one side against Mr. *Papillon*, who yet was apprehended by the first Choice to be one that had most Suffrages. But several Meetings there were, and several Common-Halls assembled, so that it was a contested matter, and as I said, there had been a Report made on the Defendant's behalf. We insist not upon the Right of Election, that has been otherwise determined. But when he is put in Nomination by the Electors in the City, and has many Suffrages, and he conceives himself rightly chosen, and they that are the Managers of the Election give such an account, that in their Judgment he was chosen; that surely was a probable Cause for him to proceed upon it. And if there be but a probable Cause to bring this to a Question, no doubt he might very well take the course the Defendant took. Here is no Arrest without legal Process; nay, their own Witnesses say there was an offer to take an Appearance without putting it on so far as an Arrest: If my Lord Mayor would have but given an Appearance, there had been an end, but he did not think fit to do that, and so the Process of Law was executed upon him. Then here is the Case in short: A Man thinks himself rightly and duly chosen into an Office, and has probable reason so to think, for the Judges of the Election think so too, and deliver that as their Opinion; so that tho he is mistaken, as the Event proves, yet he is not alone in his Mistake, nor without ground of his Apprehension; then if it be, (under favour) such a Man has no other Proceedings to take in the World for settling this matter, but to appeal to your Lordship, and that great Court where your Lordship sits, to have a Writ to command the Mayor, or other proper Officer to swear such a Man into the Office, or shew good cause why he doth not. If the Mayor upon the Receipt of the Writ thinks fit to obey it, and swears the Man, all is well: If not, he must make a Return of the Writ, with the Cause why the Command of the Writ is not obeyed. Now the Suggestion of the Writ is, that he was duly chosen into such an Office, and therefore he had a fair way to put this matter to an end; if he would have returned he was chosen, or not chosen, there had been an end of the business, which he ought (under favour) to have done in Obedience to the King's Writ. What then follows upon his not doing so? the Party that is grieved hereby has no other course to take but to bring his Action against the Mayor for it. This course the Defendant took, by taking out a Writ against the Plaintiff: and what was the Effect of that Writ? It is indeed charged here by the Counsel on the other side, that there was a Design of a discontented Party in it, and I know not what, and a great deal of stir made, that a Coroner of the City of *London* should arrest my Lord Mayor. It may be it was not so reverently done; but yet if he thought he had good Cause of Action against him, he might do it lawfully. Doth this prove to you, that this was maliciously and unreasonably done. Malice must be to the Person; Zeal and Earnestness to have Right done to a Man's self or another, in a legal Course of Justice, is not Malice, nor will make the Prosecution of the Action unreasonable and groundless. Have they proved to you, Gentlemen, any particular Discontent and Malice that was between the Plaintiff and Defendant? No truly, I think, by all the Proof that has been offered, the quite contrary does appear. The Defendant took out a *Mandamus*, directed to the Plaintiff, which was not duly returned: What then doth he do next? Doth he most violently arrest him? that, with Submission, he might do, and no Offence in Law: No, but he doth not do it, but only desired from time to time, as we shall prove anon, that he would but give an Appearance, that would have put a Conclusion to this Dispute. There is no Appearance given: whereupon he is arrested and detained in Custody six hours. If a Man be once in the Officers Hands taken upon legal Process, how long soever the Officer keeps him, is not at all to be laid upon the Person that brings the Suit, that is to be looked after by the Officer himself. Whatsoever was the Usage in that matter we are not to answer for

(tho' it is plain an Appearance would have done all presently) we shall prove we gave order to use all Deference and Respect in the World. And besides (tho' I could not speak it to invalidate any of the Evidence given about the Right of Election one way or other, yet) there being a Return of the Defendant's Election by the Sheriffs to the Court of Aldermen; but they being of another Opinion, gave Order, that those that thought themselves aggrieved should take their Remedy at Law: Which Order we have pursued in that regular course that the Law has prescribed. And I hope it will never come to that, that a Man (tho' mistaken) conceiving himself to have a Right of Action, and suing out the King's Writ, shall suffer for so doing, unless particular Malice be made to appear. Here is a great Noise of Damage, and Disrepute, and Disgrace to the Plaintiff and his Office, and he has been pleased to reckon his own Damages at 10000 *l*. We say he has sustained no Damage by any thing we have done, but we are quite not guilty of this unreasonable and malicious Prosecution laid to our Charge. And that we are not guilty, the matter that has been opened, we think will sufficiently declare. For if there were a Contest about the Election, and the Sheriffs returned it as their Opinion that the Defendant was chosen, tho' they and he too were mistaken, yet that might give a probable Ground for his pursuing the course he did take, and the very Court of Aldermen and the Lord Mayor bidding them take their Course at Law, we sure shall not be punished for it. We did not prosecute our Question in any malicious way, but in that Course that the Law allows, by taking out the King's Writ; and we hope the Law will protect us for it.

Mr. Williams. Will your Lordship be pleased to spare me a Word on the same side with Mr. Serjeant Maynard. I am of Counsel, Gentlemen, with Mr. Papillon the Defendant in this Action. We do not insist upon it, nor now offer any thing to assert our Election; We did apprehend we were Elected, but that is ruled against us, and we rested satisfied with it. But we come here now before you upon this Question; Whether we had any probable Cause of Action, upon which we might take out this Process mentioned in the Declaration, which is a *Capias* upon a *Latitat*. And we do insist upon it, that this Action of the Plaintiffs must fall upon the Issue joined, if we can satisfy you, and shew that it was not malicious, and without probable Cause. And though our Cause of Action against the Plaintiff falls out in the Event not to be a good and sufficient Cause; yet if it were probable, it will evade this Action, and that is all we labour for. They do not attempt to prove, at least-wise I have not heard any thing of it, that there was any express Malice, any thing either said or done by the Defendant, more than the causing him to be arrested upon this Writ. It is very well known, it was in the City of London a very much controverted Question, Whether Mr. Papillon, and Mr. Dubois, or Sir Dudley North, and Mr. Box, were chosen Sheriffs of London? I would not run over the History of it, it is but too well known and remembered the Divisions that were in the City about it. Some were so much dissatisfied with the swearing Sir Dudley North, and Mr. Rich Sheriffs, as thinking them not duly Elected, that they would have the Court of King's Bench moved, for the Writ of *Mandamus* to swear Mr. Papillon, and Mr. Dubois. This *Mandamus* was moved for, and granted; and to this Writ the Mayor and Aldermen, to whom it was directed, made a Return that we were not Elected Sheriff of London; which Return was apprehended to be false; and really to try the Truth of this Return, was the Action brought against the Plaintiff. A Man that is injured by a False Return, hath indeed no other way to right himself, but by bringing an Action against them that made it. Upon this Action brought, I hope you are satisfied, Gentlemen, from the Evidence that has been already given the Defendant, proceeded regularly and orderly, in a decent manner, applying himself to get an Appearance to his Action. And we shall prove he did so; For, first, he took out a *Latitat* against my Lord Mayor, and by the Attorney gave him notice of it, and desired an Appearance; so that the Question in dispute might come to some determination. But he was not pleased to give us an Appearance to that Writ; so we took out a *Capias*, gave him notice of it, and desired an Appearance, but could have no Appearance; whereupon we took out an *alias Capias*, which is the Writ mentioned in the Declaration; and the Coroner who has been named, was then told, he should be called upon to make some return to his Writ; which he acquainted my Lord Mayor with, and desired him to give an Appearance; which he refusing to do, the Officer was constrained to arrest him, to execute the King's Writ; and you hear how he treated him, with



all the respect, and carried him to his own House, where he staid some hours and then went away. All this time were we satisfied with what was done, we expected no more than an appearance, which at last was given. Upon that Appearance we did declare, in the beginning of *Hilary* or *Easter* Term (83.) But it fell out, that in *Easter* Term (83) there was an Information for a Riot upon *Midsummer*-day before, about this contested Election, came to be tried. And that coming to Trial, 10<sup>th</sup> *May*, and being found to be a Riot, and the Sheriffs sworn to be duly elected; thereupon we were abundantly satisfied that we were mistaken, and under misapprehensions, and that our Cause of Action would not hold, and we did discontinue it. Indeed, if we had prosecuted our Action after that, it would have been more like an Angry and a Silly Prosecution, and the whole have had a worse Construction, than the thing in it self would bear. But when we found the Opinion of the Court to be against us about our Election, we immediately discontinued our Action. Gentlemen, we shall prove these to have been our Proceedings, and that, I hope, will satisfy you we are not guilty according as we have pleaded.

*Mr. Ward.* May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel on the same side for the Defendant, and desire to be heard one word as to some Things that have been said on the other side in this Cause. There have been some Questions asked that do very much reflect upon the Defendant, and which I would take out of this Cause. I shall take notice, first, what the Questions were, and then give them that regard and answer which they deserve. That which is urged, Gentlemen, by way of Crimination in this Case against the Defendant, and an unjust as well as foreign Reflection (not at all concerning the Cause) is, as if the Defendant were acquainted with the Insurrection and Conspiracy that was intended against the King's Life, and for subversion of the Government, and procured the Plaintiff, then Lord Mayor, to be arrested, to further and promote that Insurrection. But as that was insinuated only for Reflection's sake, so I hope you, Gentlemen, will be pleased to take notice, that not one word of any such thing is proved at all, that the Defendant ever knew of any intended Insurrection, nor that this was done with any such Design: For even their first Witness, *Keeling*, from whose being employed by the Coroner in the Execution of the Writ upon Sir *William Pritchard* the Plaintiff, they would argue that somewhat else was designed in it, doth give a positive denial of any such thing now upon his Testimony here. And Mr. *Papillon* the Defendant never knew him in his Life, nor employ'd him in this Business, nor ordered that he should be employ'd in it, nor ever saw him; but the Coroner gave him his Warrant to execute. If therefore *Keeling* and *Goodenough* were concerned in any ill Business, and have taken upon them to do that which they ought not to have done, that doth not signify any thing in this Case, nor ought to turn to the Defendant's prejudice. Nor if any thing were done by the Officers that were to execute this Process, that were a *Misfeasance*, or a Male-execution of their Office, that ought not to be imputed as a Fault in the Defendant. But for this Matter now before you, the Case will depend upon this Point chiefly, Whether the now Defendant had a reasonable Cause, or probable Ground, to bring an Action against the Plaintiff at the time when it was brought, and this Arrest made: For there is many a Man that, at the Commencement of his Action, doth conceive in himself he has a good probable Cause of Action against another Man, that in the Event of Things finds he was mistaken, and hath no such Cause; and thereupon desists the Prosecution of it. Therefore the Probability of the Cause at the time when this Fact was done, is the Question you now are to try. For we are not now considering, whether that probable Cause did continue and prove a good Cause; the Event of this Matter has proved it quite otherwise. Indeed, the Original Question of this whole Cause was, Who were only Elected Sheriffs? And that at the time of such Election made, a great number of Votes passed for the Defendant, is, I think, very notorious, both upon the lifting up of Hands, and upon the Poll. These things we shall offer to you, and shall make it out that these gave occasion to the Defendant to contest the Election, and consequently to the bringing of the Action that the Plaintiff was thus arrested upon. If then there were such things as these that we have opened, which gave a colour to controvert the Right, and the Defendant pursued the Method prescribed by the Law to bring it to a Determination;

mination ; and there was no particular disrespect or incivility offered to my Lord Mayor, then sure there was no reason to bring this Action against us. And that there was no indecent behaviour used towards the Plaintiff, doth appear from the Evidence that hath been given of the whole Transaction. All that was desired of my Lord Mayor, was but an Appearance. For this was indeed an Action that did not require Bail, but an Appearance ; though, I must needs say, I never knew any one so averse to give an Appearance to an Action as the Plaintiff was ; for after a *Latitat* and *Capias* taken out, and being frequently acquainted with it, and at length upon application after the taking out of the *Alias Capias*, and many Attendances, with all the deference and respect imaginable, both to his Person and Office, not so much as a bare Appearance could be obtained. Upon the opening of the Declaration, and the Cause, you have been told of the great Dangers that were in the Case, as to the infringement of Publick Peace, and the Government, which has been very much aggravated on the other Side. But had the reasonable Request of the Defendant by his Attorney, or the Officer, so often repeated, been but complied with, it had been but sending to any Attorney, and ordering an Appearance ; and then, I hope, the Peace of the Kingdom had been in no Peril from such a Design as this Arrest. Which I would not have mentioned, nor should have taken to be at all concerned in the Issue now before you to be tried, but that I find them to be taken into the Question, when I hope you will consider they are no way material to the Point in Controversy. Now, Gentlemen, in our Defence against this Suit of the Plaintiffs, we shall call our Witnesses to prove what we have opened. And our Defence will be in these Steps : First, To shew the inducement to our Action against the Plaintiff, which will shew there was a probable Cause. Secondly, Give an Account of the reverent Carriage and Behaviour towards the Plaintiff in the prosecution ; how with reiterated Applications it was only desired that the Plaintiff would give an Appearance, which he was not pleased to do ; and that thereupon, with great civility, the King's Writ was executed, as indeed I see no Proof to the contrary. For neither the Coroner, nor those other People that gave their Assistance to him, were at all rude in their Carriage to my Lord Mayor ; but as soon as the Arrest was made, they were all turned off, and the Coroner staid alone with my Lord, and went with him, in his Lordship's own Coach, to the *Skinners-Hall*, which was the Coroner's House. Neither was there any thing ill done after all this was past : For upon the Plaintiffs appearance, the now Defendant declared in his Action, and intended to pursue it ; but it happened that afterwards, in a short time, these things suffered some debate in a Trial that was here about a Riot at this Election, where the Question of the Right and Election, was determined on the other side, which gave the Plaintiff in that Action, the Defendant in this, satisfaction that he was in a mistake, and so he thought fit to discontinue that Action, and proceeded no further——

*L. Ch. Just.* No, Mr. Ward, that was not the Question determined then.

*Mr. Ward.* My Lord, I humbly conceive the Issue of that Cause did determine that Question——

*L. Ch. Just.* No, no, I tell you it was not the Question.

*Mr. Ward.* I must submit it to your Lordship.——

*L. Ch. Justice.* I perceive you do not understand the Question that was then, nor the Question that is now. You have made a Long Speech here, and nothing at all to the purpose ; you do not understand what you are about ; I tell you it was no such Question.

*Mr. Ward.* My Lord, I was only giving an Account of what we should prove as to the fairness of our Proceedings——

*L. Ch. Just.* But I must interrupt you, and tell you, all you have said signifies nothing. And as to what you mention of the Tryal for the Riot ; I say, if there be any Election to an Office at any time that is controverted or doubtful, you have Forms and Methods of Law to determine the Controversy——

*Mr. Ward.* And we say, with submission my Lord, we have only pursued such Form and Method.

*L. Ch.*

*L. Ch. Just.* You are not try Rights by Club-Law, by Riots, by Noise, and by Tumults. Therefore you are mistaken, to say, that was the Question upon the Trial of the Riot. No it was not the Question; but the Defendants there were tried for a notorious Offence, and disorderly tumultuous Assembly, an Assembly that had like to have set us together by the Ears. Therefore you must not talk after that rate. If you will speak, apply to the Business in hand. Do not make such excursions, *ad cap. randum Populum*, with your Flourishes, for that is all that is designed by your long Harangues. But I must not suffer it, I will have none of your Enamel, nor your Garniture. The Business of the Court is, and by the Grace of God it shall always be my Business, and so it should be the Counsels too, *Senare jus illisum*. But I see you do not understand the Question, and that makes you ramble so much in your Discourse.

*Mr. Ward.* My Lord, I desire always to do my Duty; and do it as well as I can. I know very well, and hope to apply it to this Case, that in a Question of Right, there are Forms and Methods of Law to be pursued, and I would defend my Client from this Action, by proving he did pursue that Method; and when he apprehended he had been before mistaken, he desisted from what he had begun——

*L. Ch. Just.* I tell you, I perceive you do not understand the Question.

*Mr. Ward.* If your Lordship will give me leave to explain my self, I hope I shall satisfy your Lordship.

*L. Ch. Just.* Indeed, *Mr. Ward*, you do not understand the Question at all, but lanch out into an Ocean of Discourse that is wholly Wide from the Mark. I see you do not understand it.

*Mr. Ward.* Will your Lordship please to hear me——

*L. Ch. Just.* Ay, if you would speak to the purpose; but I cannot sit here all night to hear you make florid Speeches about matters that are foreign to the Point before us. Come to the Question Man; I see you do not understand what you are about.

*Mr. Ward.* My Lord——

*L. Ch. Just.* Nay, be as angry as you will, *Mr. Ward*, I do tell you agen, all you have said is nothing to the purpose, and you do not understand the business.

*Then there was a little Hiss begun.*

*L. Ch. Just.* Who is that? What in the Name of God! I hope we are now past that time of day, that *Humming* and *Hissing* shall be used in Courts of Justice: but I would fain know that Fellow that dare to *Hum* or *Hiss* while I sit here; I'll assure him, be he who he will, I'll lay him by the Heels, and make an Example of him. Indeed, I knew the time when Causes were to be carried according as the *Mobile* Hiss'd or Humm'd; and, I do not question but they have as good a Will to it now. Come, *Mr. Ward*, pray let us have none of your Fragrancies, and Fine Rhetorical Flowers, to take the People with.

*Mr. Ward.* My Lord, I do not do any such thing; but if your Lordship would please to hear me, I would explain my self, I hope, to your Lordship's Satisfaction, and the satisfaction of the Gentlemen of the Jury.

*L. Ch. Just.* Hear you? why, I did not interrupt you, Man, till you came to lanch out into extravagant things that did not at all concern the Cause. Keep close to the Question we come here to try, and I will hear you as long as you will. The single Question is here, Whether there were a probable Cause for your Arresting the Planting, or not?

*Mr. Ward.* My Lord, we did apprehend, I say, that we had a probable Cause; but when we found our mistake, we discontinued our Action, paid Costs, and have a Receipt for them. This was it I was saying——

*L. Ch. Just.* Say what you can, in God's Name, that will conduce to the Point in hand, but do not make the People believe as though the Right of Sheriffs, or not Sheriffs, were determined upon the Trial of a Riot.

*Mr. Serj. Maynard.* There are these things that are proper to be considered in this Question. Whether the Cause were probable, or not probable? and if not probable, whether malicious or not?



*L. Ch. Just.* True, Brother, if People will but understand their Business, it is reduced to a narrow Compass; but if they will not understand what it is they come about, they will ramble from the Point, and who can help it? But we must keep to what is before us.

*Mr. Williams.* We shall make it out, that nothing was done but very civilly.

*L. Ch. Just.* You must make it out that nothing was done but what you had Probable Cause at least for.

*Mr. Williams.* We will, my Lord, apply our selves to that which your Lordship directs. Call *Mr. Brome*, *Mr. Courthope* and *Mr. Cornish*.

*Mr. Brome* sworn.

*Mr. Ward.* *Mr. Brome*, are you sworn?

*Mr. Brome.* Yes, Sir.

*Mr. Ward.* Have you the Writs here? the *Latitat* and the *Capias*?

*Mr. Brome.* Truly, Sir, I have not, I did not bring them with me, they are at home at my house; If you please I will fetch them.

*Mr. Ward.* Pray, can you tell, Sir, when the first Writ was returnable?

*Mr. Brome.* In *Hillary* Term.

*Mr. Ward.* When you had that Writ brought to you, Sir, what did you say to my Lord Mayor about it?

*Mr. Brome.* I went to my Lord Mayor with *Mr. Goodenough*, and desired my Lord that he would appear to it, as *Mr. Goodenough* told me he had desired of him himself before. But, he said, he would give no Appearance. If I would take him up upon the Writ, I might do as I pleased, and he would consider and do as he should think fit, but he would not give any Appearance. I told him, I had Writs against several of the Aldermen upon the same Account, and that I would wait upon them also; and I did so, and desired them to appear, and offered to take an Appearance from them, and gave my Lord Mayor and them time to consider of it, and came again: but they told me, they had considered of it, and would give no Appearance.

*Mr. Williams.* When was this, Sir?

*Mr. Brome.* In the beginning of *Hillary* Term, to the best of my remembrance.

*Mr. Williams.* What time did you give my Lord Mayor to consider of it?

*Mr. Brome.* About a week, or some nine or ten days time, as I remember.

*Mr. Ward.* Where was it that you had that Answer, that he had Considered of it, and would give no Appearance?

*Mr. Brome.* It was at the Court of Aldermen.

*Mr. Williams.* Were the Writs brought agen to you?

*Mr. Brome.* There was not time to make a Return then, and so they let all alone till a little before the beginning of *Easter* Term, and then, one day, *Mr. Goodenough* the Attorney brought me the Writs agen, and threatned to complain to the Court of me, and acquaint them, that I had neglected the Execution of the King's Writs, two of them.

*Mr. Ward.* Upon your Oath, Sir, did he threaten you, that if you did not make a Return of the Writ, he would complain?

*Mr. Brome.* He said, I had exposed him to the Complaint of his Client; and if I did not do it, he would complain to the Court of me: if I would make a Return as I ought to do, well and good, if not—

*Mr. Williams.* If not, what then? Did he use any other threatnings, pray Sir, but that he would complain to the Court?

*Mr. Brome.* He did threaten to complain of me.

*Mr. Att. Gen.* You say, Sir, he threatned you; what answer did you make to him?

*Mr. Brome.* I did not use to execute Writs my self, I told him: thereupon he did propose two Persons to me, *Mr. Keeling*, and one *Mr. Burleigh*; For he told me the Sheriffs Officers would not do it.

*Mr. Att.*

Mr. Att. Gen. Pray Sir, did you endeavour to get any of the Sheriffs Officers to do it?

Mr. Brome. He told me he could not get any of them to do it.

Mr. Ward. Mr. Brome, what did you do after he had proposed those two Persons to you?

Mr. Brome. After I had given those Warrants to the Officers he had named, I told him, I was willing to go once more to my Lord Mayor, to see if I could get an appearance of him without Arresting him; so I waited on him at his House at *Grocers-Hall*, but found him then at Dinner; so I went away, and came again about Four a Clock, and I first spoke to Mr. Gibson, and intreated him to let my Lord Mayor know, that I desired to speak with his Lordship, at his leisure; Afterwards when I came up to my Lord Mayor, he asked me what was my business? I told him the Writs were renewed, at the Suit of Mr. Papillon and Mr. Dubois, and I was pressed to make a Return; and I desired his Lordship that he would be pleased to give an appearance. He told me he was ready to submit to the KING's Writ, but would not give an appearance; thereupon the Officers named in the Warrant, by my command did Arrest him.

Mr. Ward. How often did you wait upon my Lord Mayor for an appearance upon both the Writs, before he was Arrested?

Mr. Brome. Several times, I cannot exactly tell how often.

Mr. Williams. Had you directions, if he would please to give an appearance, to take an appearance, and not to Arrest him?

Mr. Brome. I had directions to take an appearance, if he would give it.

Mr. Att. Gen. From whom had you that direction, Mr. Brome?

Mr. Brome. From the Attorney Goodenough.

Ld. Ch. Just. Now, Mr. Brome, let me ask you a question or two; how long had you been Coroner before?

Mr. Brome. About two Years before, or thereabouts.

Ld. Ch. Just. Had you ever made any Warrants upon Writs of *Capias* before?

Mr. Brome. Yes, my Lord, several.

Ld. Ch. Just. Who did you use to make your Warrants to, to be executed?

Mr. Brome. I never keep my Warrants, they that execute them have them.

Ld. Ch. Just. But answer me, To whom did you make them?

Mr. Brome. To one of the Sheriffs Officers commonly.

Ld. Ch. Just. Then I ask you upon your Oath, did you before this time ever make any Warrants to any other Person, till such time as you made these Warrants to Arrest Sir William Pritchard?

Mr. Brome. I have made several to the Sheriffs Officers, that I cannot remember now particularly.

Ld. Ch. Just. But mind my question, man, and answer me directly, for I expect you should answer me positively to it. Have you ever at any time made any Warrants to any other but the Sheriffs Officers till this time?

Mr. Brome. I cannot remember that I have.

Ld. Ch. Just. How then came you at *Russel's* house to discourse with Mr. Goodenough, about who would be fit to execute the Writ, when you used to employ the Sheriffs Officers, and there were so many of them?

Mr. Brome. He told me he could get no one of them to execute it.

Ld. Ch. Just. But there must be something more in it than ordinary, that you and Goodenough, and all those other People should come to meet about such a thing as this, to discourse and consider who should be fit to be put into a Warrant to make an Arrest upon a *Capias*, when before that time you used to make it to those that are versed in those matters.

Mr. Brome. When the Attorney came with a Writ, and desired a Warrant upon it, it is usual to take whom he nominates, and make him the Officer to execute it.

Ld. Ch. Just. Then give me, if you can, any one special Instance wherein you have taken the direction of the Attorney, whose name to put into the Warrant.

Mr. Brome. Yes, my Lord, I can.

Ld. Ch. Just. Do then, let's hear it, when was that?

Mr. Brome. I did it in the Case of His Royal Highness against Mr. Pilkington: Mr. Swift came for a Warrant, and directed me whom to put into it.

Ld. Ch. Just. What directions did he give you?

Mr. Brome. He gave me the names in writing.

Ld. Ch. Just. Where is Keeling?



*Keeling.* Here, my Lord.

*Ld. Ch. Just.* What was the meaning of that word that was used by you, that the party would be angry if you did not Arrest my Lord Mayor; for that is it which makes me so inquisitive into this matter, how these People came to be employed.

*Mr. Sol. Gen.* Ay, 'pray' consider with your self, and recollect, *Mr. Keeling*; when you were first mentioned to be a special *Bayliff* to Arrest my Lord Mayor, you say you opposed it: How then came you to be drawn in, and engaged to do it?

*Keeling.* I will tell you, my Lord.

*Ld. Ch. Just.* Ay, and tell us what number of People were there.

*Keeling.* There were about Thirty or Forty.

*Ld. Ch. Just.* Was *Brome* among them?

*Keeling.* He was there some part of the time.

*Ld. Ch. Just.* Well, what was the reason that you should be engaged about this thing?

*Keeling.* I went away a while, and came again: *Mr. Brome* came in, and I was away an hour and an half, as I remember, or some considerable time. *Mr. Brome* cannot forget that when I came again, I found my name inserted in the Warrant, as a *Bayliff* to the Coroner, to Arrest *Sir William Pritchard*, then Lord Mayor. I disputed it, as being never concerned in any such thing before, and was very unwilling to be employed in the affair. Says *Mr. Goodenough* to me thereupon, you will disoblige the party in case you do not do it.

*Ld. Ch. Just.* Was *Mr. Brome* in the company when *Goodenough* said so to you?

*Keeling.* I know not that truly, but he was before in the company.

*Ld. Ch. Just.* How many were then in the Room?

*Keeling.* About Twenty, or more, as near as I can remember.

*Ld. Ch. Just.* You *Brome*, did you ever when you received a VVrit to Arrest a man, and were to give a Warrant upon it, call a Consult of Twenty or Thirty, how to do it, before this time?

*M. Brome.* I did not do it now.

*Ld. Ch. Just.* No, no, a-lack-a-day, thou wert as innocent in all this matter as a sucking Child.

*Mr. Williams.* Was *Mr. Papillon* in the company, *Mr. Keeling*?

*Keeling.* No, he was not.

*Mr. Attor. Gen.* *Mr. Brome*, 'pray' answer me; When you had my Lord Mayor in your Custody, how came you to discharge him out of Custody?

*Mr. Brome.* I was taken into Custody my self.

*Mr. Ward.* Did my Lord Mayor give any Appearance?

*Mr. Brome.* I was Committed to the Compter my self.

*Mr. Williams.* Were you by when it was agreed that my Lord would give an Appearance?

*Mr. Brome.* I believe not; it was afterwards as I have heard.

*Ld. Ch. Just.* A-lack-a-day, it went strangely against *Mr. Brome's* Stomach, all this did. I know it very well, he had no mind to it at all.

*Mr. Attor. Gen.* *Mr. Keeling*, did you hear any discourse between the Twenty or Thirty that were in that company about this business?

*Keeling.* I cannot say who in particular discoursed of it, or what was said.

*Mr. Sol. Gen.* Was it discoursed of in the whole company?

*Keeling.* There was some discourse about it in the company.

*Ld. Ch. Just.* You *Brome*, were you ever acquainted with *Keeling* before?

*Mr. Brome.* I had the misfortune, my Lord, to be concerned with him about some Coal Works.

*Ld. Ch. Just.* Did you know that *Mr. Burleigh* before, that was the other *Bayliff*?

*Mr. Brome.* I knew him by sight, I had no great acquaintance with him.

*Ld. Ch. Just.* 'Pray' where lived *Keeling*?

*Mr. Brome.* At *East Smith-field*.

*Ld. Ch. Just.* And where lived *Burleigh*?

*Mr. Brome.* Truly, my Lord, I know not, I think at the other end of the Town.

*Ld. Ch. Just.* But prithee, how came you to join these two People together in this business; the one from *Wapping*, the other from *Westminster*?

*Mr. Brome.* Where the Sheriffs were concerned, as they were in this matter, and there-

therefore it came to me, I thought it not so proper to pitch upon the Sheriffs Officers, nor would they do it, as he told me; and especially it being to Arrest my Lord Mayor, I did not think proper to imploy any one that lived in the City.

Ld. Ch. Just. But there were abundance of People that were not Citizens that were nearer at hand, and nearer together, and fitter for such a purpose than a Trades-man fetch'd out of the *East*, and I know not who out of the *West*, to Arrest a man: There must be some other meaning in it.

Mr. Brome. I gave them the nomination, as I used to do in like cases.

Ld. Ch. Just. Upon your Oath, Sir, was it you or the Attorney that named these persons?

Mr. Brome. He told me he could get none of the Sheriffs Officers to do it, and I did not think it indeed proper for any of them.

Ld. Ch. Just. And why, good Sir?

Mr. Brome. I did think so, truly, my Lord.

Ld. Ch. Just. Why? Why? What reason had you for it?

Mr. Brome. It was reasonable, as I apprehend, my Lord, for me to think so, it being in a matter wherein the Sheriffs were so much concerned.

Mr. Soll. Gen. But did you propose it, or any one else in the company, upon your Oath? And who was it?

Mr. Brome. The Attorney named them.

Mr. Com. Serj. It seems here were a great many persons met at *Russel's* about this business, I desire, my Lord, that Mr. Brome may name as many of them as he can that were there.

Ld. Ch. Just. Ay, as near as you can, name the twenty or thirty persons that were there; for you living in the City, and having an acquaintance among that sort of People, must needs know most of them.

Mr. Brome. Why, my Lord, there were both the *Goodenoughs*, and Mr. *Nelthorp*, and who in particular else, I cannot well remember.

Ld. Ch. Just. Yes, yes, I am sure you can tell more of them.

Mr. Brome. My Lord, I cannot swear that I remember any other in particular.

Mr. Com. Serj. It seems he has named some of those that are in the Proclamation; 'pray Sir, do you remember any others were there that were in the Proclamation?

Mr. Brome. I do not remember any other of those in the Proclamation were there.

Mr. Attor. Gen. Can you remember any that were not in the Proclamation?

Mr. Brome. There were several People that I knew by sight, but I cannot remember their names.

Ld. Ch. Just. Nay, nay, 'pray open your Eyes a little, and recollect your memory, and tell us who were there, I know you can do it.

Mr. Brome. My Lord, there were many Citizens that I knew by sight, but had no particular acquaintance with them,

Mr. Soll. Gen. Did you know any of the company besides the *Goodenoughs*, and *Keeling*, and *Nelthorp*.

Mr. Brome. I had a little acquaintance with him.

Mr. Soll. Gen. How come you to remember him so particularly?

Mr. Brome. I verily believe he was there.

Mr. Record. Was Mr. *West* there?

Mr. Brome. I cannot positively say whether he was or not.

Mr. Williams. Swear Mr. *Cornish* then. (Which was done.)

Ld. Ch. Just. You Brome, was Mr. *Cornish* there?

Mr. Brome. Not that I know of.

Mr. Attor. Gen. It is strange we cannot learn who those persons were that met there.

Ld. Ch. Just. Oh these fellows have strange memories for their purposes. Well, what do you call him for?

Mr. Ward. My Lord, we call Mr. *Cornish* to give an Account what he knows of this matter, what directions were given by the Plaintiff to his Attorney, how he should carry on this matter.

Mr. *Cornish*. My Lord, That which I particularly remember, I shall fully and very faithfully declare: I was with Mr. *Papillon*, and Mr. *Dubois* at my House. The occasion  
of

of their coming thither I knew not, nor did expect either of them there; I my self came from *Guild-Hall*, either from a Court of Aldermen, or from a Committee, and when I came home, I found them there. We had not been many Minutes together, but in comes Mr. *Goodenough* the Attorney, and he applyed himself particularly to Mr. *Papillon* and Mr. *Dubois*, to receive their Orders what he should do, for he said the time was almost spent, and he had address'd himself from time to time to my Lord Mayor, and some of the Aldermen to get them to appear, but they would not. They told him then they had given him what Orders they had to give him already; that it was fit the matter should be brought to some Trial or Issue, that there might be an end of it. He press'd them then earnestly to know what he should do: Said they, you are to desire an appearance to the Action, and if he will give it, take it, and remember my Lord Mayor is the Chief Magistrate of the City, and 'pray' carry it with all respect and regard imaginable to him.

Mr. *Williams*. You say, Sir, they bid him to take an appearance, if he could get it.

Mr. *Cornish*. Yes, and they declared, That their design was only to bring it to an Issue to be Tryed, and they would not insist upon any thing but an appearance, if it might be had.

Ld. Ch. Just. Wonderful Careful and Civil they were, no doubt of it.

Mr. *Cornish*. This is the Truth, and the whole of the Truth, that I know of, relating to this matter.

Ld. Ch. Just. Mr. *Cornish*, you speak of some of the Aldermen, that he said he had been with, What Aldermen were those?

Mr. *Cornish*. There were several of them, that he said he had Writs against.

Ld. Ch. Just. You were an Alderman then, 'pray' had he any Writ against you?

Mr. *Cornish*. I know not whether he had or no.

Ld. Ch. Just. But he did not require an appearance of you, I suppose.

Mr. *Cornish*. If he had, I must have taken notice of it to defend my self as well as I could.

Ld. Ch. Just. Ay, no question but you would, but were you asked for an appearance or no?

Mr. *Cornish*. I was told I should be sued among the rest.

Ld. Ch. Just. But was there any Writ shewn to you?

Mr. *Cornish*. No, my Lord.

Ld. Ch. Just. Then 'pray' let me ask you a question or two. Did you ever know any man before bring an Action, or Sue to be Sheriff of *London*: You have been Sheriff your self we know.

Mr. *Cornish*. This was a matter that had been much disputed in the City, and a question had been depending upon it whether the Right was in my Lord Mayor, or in the Sheriffs.

Ld. Ch. Just. But the question of Right between my Lord Mayor and Sheriffs, what was that to Mr. *Papillon*? Did you ever know a man bring an Action, or Sue to be Sheriff?

Mr. *Cornish*. Truly he that experienceth the trouble of it, will, I believe, never be desirous of it.

Ld. Ch. Just. But that is no answer to my question, answer me directly: Did you ever know any such thing before?

Mr. *Cornish*. I never did hear of any such, that I know of.

Ld. Ch. Just. How then came Mr. *Papillon* so officiously to desire it?

Mr. *Cornish*. I cannot answer; what his Reasons were I know not.

Mr. *Williams*. It was an Action to determine the Question that was at that time so much litigated in the City of *London*.

Mr. Att. Gen. Mr. *Cornish*, 'pray' will you answer me one thing; Were you never in no Company, wherein it was agreed this Suit should be brought and carried on in their names?

Mr. *Cornish*. Mr. Attor. Gen. I never meddled nor managed it.

Mr. Att. Gen. Did you never here it was so agreed?

Mr. *Cornish*. It is known to Thousands, as much as I know of it; the matter was disputed of in all Companies in the City.

Mr. Att. Gen. But you do not answer to my question, were you ever in any Company when it was agreed that so it should be?

Mr. *Cornish*.



Mr. Cornish. Sir, I tell you as well as I can, the matter that was to be disputed by that Action, was the general discourse of all Societies of men, whatever, in the City at that time.

Ld. Ch. Just. It is a strange thing, that one cannot get a direct answer from these People to any thing one asks them : I desire to know one thing of you, Mr. Cornish ; You have known Mr. Papillon the Defendant before this time.

Mr. Cornish. Yes, my Lord, I have known him several years.

Ld. Ch. Just. Was he ever chosen Sheriff of London before ?

Mr. Cornish. Yes, my Lord, I suppose he was.

Ld. Ch. Just. How chance he did not hold then ?

Mr. Cornish. I have heard he Fined, as was common and usual, when Persons occasions would not permit them to attend the Service of the Place.

Ld. Ch. Just. He did so, it is known to thousands, as you say, that he did. Now 'pray' let me ask you another question ; was Mr. Bethel ever chosen Sheriff before that time you and he were Sheriffs together ?

Mr. Cornish. I do not know that he was chosen before.

Ld. Ch. Just. How is that ?

Mr. Cornish. My Lord, I do not understand what the question is, or else I know nothing of it.

Ld. Ch. Just. How, did you never hear of that before ? For, Mr. Cornish, I do not speak of a thing that no body knows ; alas thousands, and ten thousands of people know that too.

Mr. Cornish. My Lord, upon my Oath, I do not know that ever he was.

Ld. Ch. Just. Did you ever hear it ?

Mr. Cornish. I do not know that ever I did.

Ld. Ch. Just. Did you never hear that Mr. Bethel swore himself off, as they call it ; you know what I mean.

Mr. Cornish. I do not remember any thing of it.

Ld. Ch. Just. Nay, nay, it is to the matter, I assure you, Mr. Cornish, whatever you think of it. I ask you then another question that lies something nearer your memory : Upon your Oath, when you two were Elected upon *Midsummer-day*, was not that Election vacated, and you chosen again within a Week, or some little time after ? And was it not because you had not taken the Sacrament, and the Corporation-Oath ?

Mr. Cornish. My Lord, I do remember there was a second Election.

Ld. Ch. Just. And we remember it too well enough.

Mr. Cornish. That was so lately, that any Citizen of London, or any one that lived here may remember the Passages of those Times.

Ld. Ch. Just. And you have as much cause to remember it as any man, I assure you, for several reasons that I know.

Mr. Cornish. My Lord, I think I have reason to remember it.

Ld. Ch. Just. Least you should forget it, I will enlighten you, and refresh your Memory a little, I ask you again, upon your Oath, Was not your first Election set aside, because you had not taken the Oaths and the Sacrament ?

Mr. Cornish. There were two Elections, my Lord, I say I do remember.

Ld. Ch. Just. Sir, do not prevaricate with me ; I expect a positive answer ; Was not that the reason, upon your Oath ?

Mr. Cornish. I cannot say that was the positive reason.

Ld. Ch. Just. Then I ask you, upon your Oath ; had you taken the Oaths and the Sacrament as the Law requires ?

Mr. Cornish. My Lord, Mr. Bethel, was a stranger to me, I did not know him before that time.

Ld. Ch. Just. Gentlemen, Men must not think to dance in a Net, and blind all the World. As to my one self, I know these things very well, without any of their assistance, and I only ask these things by the bye, to let the world be satisfied what sort of men these are, that pretend to Saintship, and yet, you see, one can hardly get one word of truth out of them : Let the Law, in G O D's Name, take place, and let every man prosecute his Legal Actions ; but when under the Umbrage and Countenance of Law, men shall desire to put themselves into Offices, and Places of Trust, on purpose to disturb the Government. Do you think the Government will ever suffer it self to be snivelled at, and overthrown by a Company of such Whining Fellows. Let them hiss and hum, and make a noise, and a-do as they will ; thanks be to God, 'tis not that time of day now : Such

things have past too much uncontroul'd in the Body of this City heretofore. What, Gentlemen, are you baffling the Law with such pretences as these now-a-days, and do you think to sham People into Offices: No, I tell you, Villainy was the foundation of it, and Knavery the superstructure; and it is high time it should be told out, since I hear people begin to doubt of it as a question.

Mr. Ward. Where is Mr. Serjeant, Swear him. Which was done.

Ld. Ch. Just. Do not I know, as sure as I sit in this Place, that Bethel did once before Swear himself off; and that there were two Elections of these two very men that year, and that one of the Reasons was, because they had not taken the Oaths and the Sacrament according to Law; nor would they ever have done it, we know them, neither Bethel, nor that very fellow that stands there, Cornish, neither, till they found it would contribute to the Design of Subverting the Government; then these Rascals could qualify themselves for an Office, only to put the Kingdom into a Flame.

Mr. Cornish. When the City chose me, I had good reason for what I did.

Ld. Ch. Just. Reason; I tell you, the City was in great happiness and quiet, ever since the late times of Rebellion and Confusion; every one knew his Duty to his Superiors, and did it cheerfully and conscientiously, till such time as a couple of busie fellows came to get into the publick Offices. Let the whole party go away with that in their Teeth, and chew upon it if they will.

Mr. Williams. Mr. Serjeant, will you please to tell my Lord and the Jury, what directions you heard the Defendant, Mr. Papillon, give about the Plaintiff, how they should treat him.

Mr. Serjeant. My Lord, I was in the Counting-house at Mr. Alderman Cornish's house, when Mr. Papillon and Mr. Dubois were there; I went into the Parlour to them, and Goodenough coming in, they fell into a discourse about this Action, that was brought by them against Sir William Pritchard, then Lord Mayor, and some of the Aldermen; And Goodenough gave them an account how far he had proceeded in it; he said, he could not get any of them to give an appearance, and the time was near spent, and he desired to know of them what he should do. Mr. Papillon, and Mr. Dubois both, did declare to him over and over again, that it was their mind only to have the matter brought to a fair Trial; and they charged him to look to it to do nothing but what was Legal, and carry it with all respect imaginable to my Lord Mayor, as the Chief Magistrate of the City; that he should by all means get an appearance from him if he could, and get the Coroner, who was an Officer of the City, to go with him, and carry all things fairly and decently.

Mr. At. Gen. Who gave these directions, Sir, do you say?

Mr. Serjeant, Mr. Papillon, and Mr. Dubois, both of them did.

Mr. Ward. Now my Lord we shall shew that we proceeded so far in the Action, as to declare, but afterwards apprehending our selves to be under a mistake, we discontinued our Action.

Mr. Williams. And the costs upon the discontinuance were received by my Lord Mayors Attorney. Here is the Declaration as it was filed.

Ld. Ch. Just. Ay, it may be there was a Declaration filed, but not regularly.

Mr. Williams. My Lord Mayor after appeared.

Ld. Ch. Just. How doth that appear in Evidence? For the Coroner, says he himself was in Custody, and knows no more of the matter afterwards.

Mr. Williams. I believe your Lordship doth remember there were many motions made in Court about this matter, on the one side and the other, and at length in Court it was compromised, and my Lord Mayor promised to give an appearance.

Ld. Ch. Just. Prove what you can; prove the appearance entered, & declaration received.

Mr. Williams. My Lord, I only offer this as an Evidence of an appearance.

Ld. Ch. Just. A Record, I know, is a good and fair Evidence, shew that if you can.

Mr. Ward. It is not usual to declare till the Defendant appears.

Ld. Ch. Just. A Declaration may well be upon an appearance, but because it cannot be good without an appearance, therefore it cannot be a sufficient Evidence of it.

Mr. Ward. We will prove the Costs of the discontinuance paid and accepted. Swear Mr. Baker. (Which was done). What do you know, Sir, of any Costs that were taxed and paid for a discontinuance in this Case?

Mr. Baker. My Lord, Mr. Aston told me he appeared for Sir William Pritchard, then Lord Mayor, and had a Declaration from the now Defendants Attorney: So I entered up a Discontinuance, and paid the Costs, and have Mr. Aston's Receipt for them.

Ld.



Ld. Ch. Just. He says well. Go on then.

Mr. Williams. My Lord, it is a thing that hath frequently happened, that after a man has brought an Action against another, he finds he was mistaken, and hath no cause of Action, and thereupon relinquisheth his Suit: But sure that will not make him liable to a Suit.

Ld. Ch. Just. Well, 'pray' go on with your Evidence.

Mr. Ward. My Lord, we are not now offering to try the right of Election, tho' that really was the Foundation of the Action that we brought, but we apprehended that question to be determined, and we acquiesced in it when that Trial was over. Now, my Lord, we shall shew that apprehending our selves really chosen, we did in a due course of Law, sue forth our *Mandamus*, directed to the Plaintiff and the Aldermen; and there is a Return made. I pray these may be read.

The *Mandamus* and Return were read.

Mr. Williams. Then that which we shall next shew, is the grounds and reasons why we thought this Return was false, and thereupon brought our Action. We shall shew that at a Common-Hall, held for the Election of Sheriffs, the Defendant was in nomination, and had a great number of Hands and Voices for him. 'Pray' call Mr. Gilbert Nelson, Mr. William Wightman, and Mr. Leonard Robinson.

Who all appeared and were Sworn.

Mr. Ward. Mr. Nelson, 'pray' were you at the Common-Hall for Election of Sheriffs, in the Year 1682.

Mr. Nelson. I was at the Common-Hall in June, 1682. on *Midsummer-day*.

Mr. Williams. 'Pray' Sir, will you tell us who were then in nomination, and how they did proceed.

Mr. Nelson. There were in nomination for Sheriffs, he that is now Sir Dudley North, then Mr. North, Mr. Box, Mr. Papillon, and Mr. Dubois.

Mr. Ward. 'Pray' Sir who had the majority of Hands?

Mr. Nelson. I did see the Poll-Books after they were cast up.

Mr. Williams. But did you observe the holding up of the Hands?

Mr. Nelson. Upon the holding up of the Hands, the Election was by the Sheriffs given to Mr. Papillon, and Mr. Dubois.

Mr. Williams. But 'pray' Sir, upon your view, and in your judgment, were there many Hands for Mr. Papillon?

Mr. Nelson. I guess there were the most Hands for him, and Mr. Dubois.

Mr. Ward. What say you then to the summing up of the Poll-Book that you spoke of?

Mr. Nelson. I did see the Books after they were cast up.

Mr. Ward. Was there a great number for Mr. Papillon?

Mr. Nelson. Yes, there was the greatest.

Mr. Com. Serj. What Books do you mean, Mr. Nelson?

Mr. Nelson. The Books in the Sheriffs Custody, Sir.

Mr. Com. Serj. But did you see my Books?

Mr. Nelson. That was upon the second Poll.

Mr. Ward. Then which is Mr. Wightman?

Mr. Wightman. Here I am, Sir.

Mr. Ward. Were you present at this Common-Hall? Did you see this Election?

Mr. Wightman. I can say nothing to the Election.

Mr. Williams. Were you at the Common-Hall on *Midsummer-day*, 1682?

Mr. Wightman. I cannot say that, Sir.

Mr. Ward. Then what is it you can say to this matter in question? Did you take any Poll?

Mr. Wightman. I did take the Poll in one of the Books.

Mr. Williams. Was there any number for Mr. Papillon?

Mr. Wightman. There were 2400 and odd, for Papillon and Dubois.

Mr. Thompson. Who were in nomination, Sir? Who were the persons Poll'd for?

Mr. Wightman. Sir Dudley North, Mr. Papillon, Mr. Dubois, and Mr. Box.

Mr. Ward. What say you, Mr. Robinson, were you at this Common-Hall in 1682?

Mr. Robinson, Yes, I was.

Mr.

Mr. Williams. Who were named to be Sheriffs then?

Mr. Robinson. Mr. North, now Sir Dudley North, Mr. Ralph Box, Mr. Thomas Papillon, and Mr. John Dubois, they four.

Mr. Williams. What number had Mr. Papillon for him?

Mr. Robinson. I never saw the Poll.

Mr. Ward. But upon the view in the Hall, in your opinion, did you look upon it as a doubtful case which was Elected.

Mr. Robinson. By the Hands, I judged the majority was much more for Mr. Papillon, and Mr. Dubois, than for the other two.

Mr. Williams. So you think in your Judgment.

Mr. Robinson. Upon my Oath, that was my opinion.

Mr. Williams. Well, my Lord, we must rest it here unless they give us further occasion.

Mr. Attor. Gen. You say the majority was for Papillon and Dubois: 'Pray' was the Election declared at that time by the Mayor and Aldermen, or was there a Poll demanded?

Mr. Robinson. Mr. Attorney, first the question was put for the persons; then the Sheriffs declared their opinion, and a Poll was demanded, and a Poll was granted, and the Sheriffs went with the Common-Serjeant up to the Court of Aldermen, and acquainted them with it, and then they all came down again, and declared that there should be a Poll.

Mr. Soll. Gen. VWho were Sheriffs then, 'pray' Sir?

Mr. Robinson. Mr. Alderman Pilkington, and Mr. Samuel Shute; and in the Evening after the Poll was closed, the Books were numbred up, the Sheriffs came down upon the Hustings and declared the numbers, and then as I remember, the number declared for Mr. Papillon, and Mr. Dubois, was above 2000. and the number declared for the other two, was some Hundreds under 2000.

Mr. Ward. My Lord we leave it here.

Ld. Ch. Just. VWill you that are for the Plaintiff, say any thing more to it?

Mr. Attor. Gen. Yes, my Lord, we have more Evidence to give in answer to what they have brought here. My Lord, that which they would excuse themselves by, is, that there was a probable Cause; but that will fail them, if it be but observed what doth appear upon their own Evidence. It is true, where a man hath a probable right, he may Sue. But this matter here contended for, was never such a right as a man may to sue for. No man can ever shew that for the Shrevalty, an Office of Burthen, an Office of Hazard, and an Office of Charge and Expence, any man did ever sue; so little ground of reason had they to bring this Action for this Office. And then for their Title to the Office, that will appear but very weak. They pretend that my Lord Mayor and Aldermen could not try the right who was Elected truly and rightfully; and they bring this Action to try it; and then they produce some of the men that held up their Hands, and in their Opinions, Gentlemen, they say, the Election fell upon Papillon and Dubois. But, Gentlemen, that my Lord will tell you is nothing at all of Title, but a Poll was demanded, and by that it must be decided. Then one of their VVitneses tells you a story of what the Sheriffs did upon the Poll: But all that is nothing too. For we tell you, and shall prove it, that those Sheriffs did in a riotous manner, assume, and take upon themselves the Supream Government of the City, and would have excluded my Lord Mayor from it. But all their proceedings, and all that they call a Poll, was void, and can make no Title to any thing at all. It was a bare dispute of a factious Party, to subvert the Orderly Government of the City. There was no probability of Title or Right could be gained by it. For the Chief Magistrate of the City, for the time being, ever did direct the Poll, and all the Proceedings upon Election of Officers. And when he did so in this Case, we shall prove to you there was not any considerable number (that is, not twenty men) to give any pretence of Title to this Gentleman that thus sued for this Office. But indeed in that most riotous assembly one of them that ever was, they do pretend to be Elected: But we shall shew that for that riotous assembly they were convicted here as Rioters upon an Information, and fined to the King for it. And I could tell them of a like Case of an illegal Title, a man goeth by a false Oath to get a Possession of goods, takes out a *Capias*, and with others, getting into a House to arrest the Party, he then carries away all the Goods, and upon this possession would set up a pretence of Title: But upon an Information for a Riot, he was severely punished for it.

Mr.

Mr. *Papillon*, if he had thought he had had a good Title or Cause to bring this Action, he would have employed better Instruments to have proceeded in it. The Attorney he makes use of, who is it but Mr. *Goodenough*? one who did not live within the City, nor had any thing to do in it, till brought into Office as the great Instrument of Mr. *Bethel* in his Actions, and a great Plotter in the late horrid and dreadful Conspiracy. And this Cause, how is it managed? Not by any Counsel of worthy Men of the Robe, or grave Citizens; but by a Cabal of thirty or forty Rioters, most of them in the Proclamation, proscribed as Traitors, and run away from Justice upon the Discovery of the Plot. All this speaks Malice, and the worst of Malice; the thing it self speaks it to pretend a Title with so little or no ground. For you plainly observe, there is no Title but this riotous Assembly to ground their pretences upon. In the Prosecution of this Action, there was no Order, whatsoever they pretend, for to take an Appearance; I mean by those that really were at the bottom of the Design. For the forty Men at the Consult at *Russell's*, did not meet to be sure to give Order for an Appearance. No, they had other work to do. An Appearance would not do their work: For, as Mr. *Keeling* at large could explain it, they took all Opportunities to rise and make a Mutiny, and take advantage of the *Mobile* and disturbances to bring about their main Plot. They did not care five-pence for the Appearance: But when the Soldiers were up, then the Plot was spoiled, and then my Lord Mayor may go home if he will. Gentlemen, we shall prove what I have opened to you, tho' I am perswaded not one of you but know it as well as I.

Mr. *Sol. Gen.* Shew the Records of the Conviction of the Riot.

L. C. J. Hold Mr. *Solicitor*, I tell you before Hand, that as I stopp'd them from urging the Trial for the Riot, as any Determination of the Right of Election, or as any ways tending to the Question now before us; So I must not let you neither enter into that matter. The business of the Indictment, Conviction and Sentence upon the Rioters makes nothing either to the Right of Election, or this Right of Action. And therefore, as I said to Mr. *Ward*, it was nothing to the Purpose to mention it on that side: So it is to no Purpose, I must tell you, to mention it on the other side. For it was no Determination of the Point of Right one way or other. And he could not give it in Evidence, that that was a *Litigation* of the Matter in Dispute, and upon the Decision of that Indictment, (till which he apprehended he had a Right) he found it was against him, and so desisted. No, the Right I say was not at all effected by that Trial one way or other. For admitting they had a Right, or you had a Right; yet the gaining your Right must not be attempted in a wrongful manner; but they had a lawful Way to come by their Right; and if they pursued that, well and good; if not, then they must take what comes of it.

Mr. *Att. Gen.* My Lord, that Right was insisted on by them as the probable ground of their Action, and that we say was no Right.

L. C. J. Therefore it is to no Purpose to urge it.

Mr. *Sol. Gen.* But, my Lord, with Submission, our Answer to their Title is that there was no Colour of Pretence, and this Conviction proves it.

L. C. J. No, Mr. *Solicitor*, that is not any Evidence one way or other.

Mr. *Sol. Gen.* If your Lordship please, it destroys their very Title, which is the Number of the Poll.

L. C. J. Lord! the thing is as plain, Gentlemen, as any thing can be. You or they may have a good Title, and yet do a thing that is unlawful to bring the Title into Possession. But then the punishing you for that unlawful Act, is not an Evidence either against or for the Title, nor doth determine it for you, or against you.

Mr. *Sol. Gen.* My Lord, we submit to your Lordship's Directions in it. But then this we say to it; the Question now is reduced to this Point: Whether there were any probable Cause for the Defendant's Suit against the Plaintiff? They have insisted upon it that there was, from two grounds. They call Witnesses, who declare they were of Opinion, that the Defendant had the Right of Election by the holding up of the Hands. That is one of the probable Causes of their Suit. Now that is clearly gone by this single Point, whether the Election was determined upon that holding up of the Hands, or they went to a Poll to decide it? If they went to a Poll, then it is clear the Right of Election was not determined; and he could have no Right to be Sheriff upon the holding up of the Hands. Then they went a little further, and offered in Evidence the Sheriff's Poll-books, or the Numbers taken out of them; wherein they say, the Majority was for Mr. *Papillon*; and so thereupon, say they, we brought our Action. Now, to that Objection it is proper for us, with Submission, my Lord, to answer it, that that can be no manner of Cause of Action in the World; because, say we, that was no Part of the Election at all, nor was it at all to govern the Question of Right one way nor other; 'twas a Number of Names taken out of the regular Course upon Elections



by Persons that had no legal Authority ; nor was it such a Method, as was a Foundation to ground any Opinion upon one way or other ; much less, such a one as would be a Cause of Action. These are all the grounds they went upon. The first, by their own shewing, was no ground at all ; for there was no Determination of the Right upon the View, but a Poll was agreed upon : The other, we shall call Witnesses to prove was irregular, and so not legal. Swear Mr. Town-Clerk. [Which was done.]

Mr. *Att. Gen.* 'Pray' Sir, will you give my Lord and the Jury an Account, who is to govern the Poll upon the Election of Sheriffs, or other Officers at the Common-Hall ?

Mr. *Town-Clerk*, My Lord, I never knew a Poll about Sheriffs till about five or six years ago, and that was the first Poll that ever I knew, and it was between Mr. *Jenks* and Sir *Simon Lewis* ; and indeed, it was the first that ever I did read of in any time within the City of London. I think, I have seen the Entry of all the Elections of Sheriffs, that are extant in our Books in all times ; and I think, I did never see in any of those Entries one Poll that was ever taken for Sheriffs ; it is only mentioned, Such an one elected by the Mayor by Prerogative ; and such an one, by the Commonalty. Among other Books of the City's, there is an old Book, that is called by the Name of *Liber Albus*, which speaking of the Constitution of the Common-Hall for Election of Sheriffs, says, *First of all the Mayor shall chuse one of the Sheriffs for London and Middlesex, for whom he will answer ; and then the Commonalty shall chuse another to join with him, for whom they will answer. And if there arise any Difference between them, who is elected, or not elected, it shall be determined in the same manner, as it is in the Common-Council.* This is all the Notice, that I find in any of the City-Books that looks like a deciding the Election, when disputed by a Poll. Now in another Chapter of that Book where the Common-Council is mentioned ; it is said, *If there be any Division of Opinions in the Common-Council, the Common-Serjeant and the Town-Clerk, shall examine every Man severally, what their Opinion is, which is by way of Poll at this day when we had a Common-Council.* But till that time that the Poll was between Mr. *Jenks* and Sir *Simon Lewis*, I never knew any Poll for Sheriffs, and that Poll was taken immediately by telling one and the other. For my Lord Mayor and Aldermen as soon as ever they come upon the Hustings, make Proclamation to have the Liveries attend for such Elections ; and then withdraw and leave the Sheriffs and the Common Serjeant.

Mr. *Att. Gen.* Sir, the Course is very well known I suppose, to the Gentlemen of the Jury. But 'pray' did any Persons Poll at my Lord Mayors Books for *Dubois* and *Papillon* ?

Mr. *Town-Clerk*, Not that I know. As to this Poll, my Lord Mayor caused the Common-Hall to be Adjourned to such a time ; and after that sent for the Common Serjeant, and my self, and required us to go get Books, to take the Poll for Mr. *Box*, Mr. *Papillon* and Mr. *Dubois* ; as for Sir *Dudley North* he was not to be Poll'd for, he being Chosen before, by the Prerogative of the Lord Mayor, and my Lord Mayor and Aldermen declared him fully Elected, and upon that he was called out by publick Proclamation upon the Hustings, to come and take the Office upon him, as is usual in such Cases. But we had directions to provide Books to take the Poll for Mr. *Box*, Mr. *Papillon* and Mr. *Dubois* ; and we did so, and took the Poll for these three Gentlemen, and upon closing of the Poll, we all of us sealed up our Books, and delivered them to my Lord Mayor ; and at a Common-Hall afterwards, he did declare Mr. *Box* to be Chosen the other Sheriff, to be joined with Sir *Dudley North* : The Poll was, as it always ought to be, by the direction of my Lord Mayor ; and the Sheriffs are but Officers, and not the Judges and Managers of the Poll, without my Lord Mayor's direction.

*L. C. J.* What say you to it, Gentlemen ? Have you any more Evidence ?

Mr. *S. Maynard*. My Lord, and Gentlemen, Here has been much said in this Cause that is nothing to the purpose. As particularly, that which the Plaintiffs Council did last insist upon, who took the Poll, and who had right to take the Poll or not, is not any thing to this Question : This Action is not at all concerned in that matter. For whatsoever the dispute was, and which soever had the right, (and because it was a dispute, some it may be could not Poll at the one, and others would not Poll at the other) yet the lifting up of two thousand Hands, might make him think that he was Chosen Sheriff ; and there lies the Cause of his Action, his apprehension of a Right : Your Lordship did Object this to us, Who ever before brought such an Action as ours, and did sue to be Sheriff of London, a Place of Charge and Trouble ?

*L. C. J.* No, I did not make it as any Objection. I asked your Witness, *Cornish*, that Question indeed, for some Reasons that I know.

Mr. *S. Maynard*. That may be Objected indeed to the Prudence of my Client, Mr. *Papillon*, to desire such an Office : But that proves nothing of Malice in him against the Plaintiff, for if he were never so unwise as to desire it, if he had a Right to it, or thought he had, it is not

not a malicious thing in the Eye of the Law, for him to take his Legal Course for it; and then the Objection that is made of the Instruments that were used. Our Attorney *Good-enough* is in a Plot: What is that to us? There is not the least suspicion upon us. He is a bad Man: But that doth not make all his Clients bad. But the Question now before you is, First, Whether there were any probability of a Cause of Action. Secondly, if there were not a probable Cause; yet whether that Action was grounded upon Malice? What Malice I pray is there in this, against my Lord Mayor, to desire an Appearance of him, when it is conceived, though upon mistake, that there is Cause of Action against him? We did not press him to give us Bail to our Action, or threaten else to arrest him: No, it was a decent rather than an irreverent Application to him. If then there be not both concurring, want of Title, or probable Cause and Malice too, this Action of the Plaintiffs is without ground. No Man that has any Sense, if he knows he has a clear Title against him, will bring an Action; but though it should be clear against him, yet if he do bring an Action, but not vexatiously and maliciously, that cannot subject him to an Action; that would frighten Men from bringing Actions upon doubtful matters, which certainly is Lawful for any Man to do. Now what Malice is proved in the Defendant against the Plaintiff, the Jury here are Judges of. If we were Criminal in the manner of our Proceedings, they might come before your Lordship in another way; but sure this is not the way; and if it should be Actionable, and we likewise subject to be punished as a Criminal, then we should suffer twice for the same fault. Now, Gentlemen, upon this Action we are not to be fined; but they, if they can, are to shew what damages the Plaintiff sustained by our Action; and if what we have said do not satisfy you, that we had probable Reason for what we did, then you upon your Oaths, are to give him what damages you in your Consciences think he has received by it.

*Mr. Williams.* My Lord, if your Lordship please, I would ask one question of Mr. Town-Clerk, as to the Right of managing the Election. Sir, You have observed many Common Halls for Elections.

*Mr. Town-Clerk.* Yes, Sir, I have for this twelve years.

*Mr. Williams.* Did the Common-Hall ever go to a Poll upon an Election, before this time, that you know of?

*Mr. Town-Clerk.* Never but once for the Election of Sheriffs, I say.

*Mr. Williams.* I speak, Sir, of any sort of Poll; for I suppose you do not call the holding up of Hands, a Poll.

*Mr. Town-Clerk.* Mr. *Jenks's* Poll was the First that ever I knew for Sheriffs.

*Mr. Williams.* Well, Sir, Was that managed by the Sheriffs, or by my Lord Mayor, or by you, and the Common Serjeant; or who was it by?

*Mr. Town-Clerk.* Sir, The Mayor and Aldermen withdraw, and leave the Sheriffs to view the Election by the Hands; and the Common Serjeant propounds the Question, *So many of you as will have, &c.*

*Mr. Williams.* By whose direction doth he propound the Question, 'Pray'?

*Mr. Town-Clerk.* By the direction of the Common-Hall, I take it.

*Mr. Williams.* But if a Question do arise upon an Election, so that it cannot be decided by the view, but they go to a Poll, Who is to manage that Poll?

*Mr. Town-Clerk.* The Officers of the City, by direction of the Lord Mayor.

*Mr. Williams.* That Poll you speak of, for *Lewis* and *Jenks*, Was that managed by any body, but by the Sheriffs?

*Mr. Town-Clerk.* It was managed by the Sheriffs and the Common Serjeant, in the accustomed manner.

*Mr. Williams.* How? in the accustomed manner, when you say that was the first that ever you knew?

*Mr. Town-Clerk.* It was so for Sheriffs, but there have been Polls for other Officers.

*L. C. J.* Why, *Mr. Williams*, every body knows that well enough, that the Sheriffs are concerned in the management of the Election or the Poll, as all the rest of the Officers of the City are, under my Lord Mayor; and the Common Serjeant consults with the Sheriffs Officers and People about him, upon the view.

*Mr. Williams.* 'Pray' Sir, do you remember the Election of Mr. *Bethel*, and Mr. *Cornish*.

*Mr. Town-Clerk.* Yes, Sir, There was a Poll there too, that was the Year after.

*Mr. Williams.* Who managed that Poll?

*Mr. Town-Clerk.* The Sheriffs, and the Common Serjeant, and I, did agree to take it thus in two Books, whereof one was with the one Sheriff, and the other with the other Sheriff, at the two ends of the Hall.

*Mr. Williams.* That was taken in Writing, Sir, Was it not?

*Mr. Town-*

*Mr. Town-Clerk.* Yes, Sir, That other of *Jenks* was only by telling.

*Mr. Williams.* Were you concerned in taking that Poll?

*Mr. Town-Clerk.* I did assist at it one day.

*Mr. Williams.* Who ordered you to take the Poll that day?

*Mr. Town-Clerk.* Truly, I did concern my self as little as I could in those things: What Report was made to the Court of Aldermen, I cannot tell; but one day coming into the Hall, I had no Mind to concern my self in it; but some Gentlemen, did pray me to go up to the Poll; and I did go up.

*Mr. Williams.* Sir, Upon your Oath, Did the Sheriffs direct you to take it?

*Mr. Town-Clerk.* I really think they did not.

*Mr. Williams.* Did my Lord Mayor direct you?

*Mr. Town-Clerk.* No, Sir.

*Mr. Williams.* Did the Sheriffs manage it?

*Mr. Common-Serj.* I did it by Sir *Robert Clayton's* Order, who was then Lord Mayor.

*Mr. Williams.* My Lord, all that we say to it is this, We are not now proving our Right upon which we brought our Action, that we submit unto, it is against us, we must agree it: But be the Right one way, or other; yet we might from a supposed Right, have a probable Cause of Action. It seems to be a doubtful business, by all that *Mr. Town-Clerk* has said, who has the Right, for all he knows of, the Constitution is from *Liber Albus*, and that is somewhat dark. You, Gentlemen, hear what is said; the thing was a Question of five or six days, and a puzzling one it seems, and therefore we might be misled into an apprehension, that what the Sheriffs did was right, and so not at all concern our selves with what my Lord Mayor did. —

*L. C. J.* *Mr. Williams* you talk of that you do not understand; for my Lord Mayor was not there at that time of *Jenks's* Poll: I was Common Serjeant my self, and I know the Sheriffs have nothing to do with it.

*Mr. Williams.* It should seem by *Mr. Town-Clerk* to be doubtful, sometimes one, and sometimes another, did direct the taking of the Poll.

*L. C. J.* But you are out still: But for all that, this is nothing to your Right of Action, one way or other.

*Mr. Williams.* My Lord, I must lay it here, it was a doubtful thing, and we brought our Action to try the Right; but afterwards conceiving we were out, and had no Right, we discontinued and desisted.

*L. C. J.* It was so far from being their Right, that I desire you to call me any one Witness, that can say, before *Jenks's* time, there was ever a Poll for Sheriffs, or such a thing thought of.

*Mr. Williams.* We were under an apprehension of a Right in them.

*L. C. J.* There could be no colour for any such apprehension in the World.

*Mr. Williams.* We must submit it to your Lordship's directions.

*Mr. Att. Gen.* So do we.

*Mr. S. Maynard.* Whether this Action brought by us, was malicious.

*Mr. Ward.* My Lord, *Mr. Attorney* doth challenge the Defendant, to shew that his Action was brought by advice of Counsel; we shall shew it was with good Authority of Counsel. *Mr. Baker*, can you tell whether it was by any Advice, and whose?

*Mr. Baker.* It was by the Advice of *Mr. Thompson*, *Mr. Pollixfen* and *Mr. Wallop*, as I have heard.

*Mr. Att. Gen.* But you hear what *Keeling* says, there was a Party that were at a Consult about it, and that were concerned in it.

*Mr. Sol. Gen.* My Lord, We have done on both sides, I think, and submit to your Lordship's direction in it.

*L. C. J.* Will any of you say any thing more?

*Mr. Williams.* No, my Lord, we have done, we leave it upon this Evidence to your Lordship and the Jury.

*Mr. Att. Gen.* My Lord, We have no more to say for the Plaintiff.

*L. C. J.* Then, Gentlemen of the Jury, as my Brother *Maynard* said in the beginning of his Defence in this Cause; so I say now to you, to set all things strait and right; God forbid, that any heat or transport of the times, should bring us into that Condition, but that every Subject of the Kings that hath a right of bringing an Action at Law against another, should have free Liberty so to do. And the Courts of Justice are now, and I hope always will be so open, that every one that would take a Remedy prescribed by the Law for a wrong done him, may be received to bring his Action, which is a Legal Remedy.

And



And I am to tell you, Gentlemen, that much has been said in this Case, (which I perceive is by the Concurrence of People a Cause of great Expectation as my Brother likewise said) which is not at all to the Case. I am sorry truly at this time of Day, that we should stand in need of such Causes as these, to settle and keep People in their due bounds and limits. But tho' many things have been said in the Case that are quite besides the natural Question; yet, they having being made Dependancies upon that Question, and because it seems to be a Case of such Expectation, I think it will become me in the Place wherein I am, to say something to you, and according to the best of my Understanding, tell you what I apprehend to be the legal Part of it, stripped of what hath no Relation at all to it. And if I shall omit any thing that is material on the one side or the other, here are Gentlemen that are Learned in the Law, who are of Council both for the Plaintiff and the Defendant; and I shall not think my self under any sort of Prejudice in the World, if they take the liberty, as they may freely do, to interrupt me and enmind me of what I forget, or wherein I may mistake.

For, Gentlemen, I assure you for my own Part, I would not have the Law made subservient to any Purpose, but the exact Rule of Justice. I would to the best of my Understanding in all Cases *servare jus illatum*, preserve the Law and the Right of every Man inviolable. I would have the Law of the Land to be the measure of my own and all other Men's Actions. And I hope no Man can justly (I am sure I do not know they can) complain of any Breach or Invasion that is made in the Courts of Justice, either upon Law or Right. But all those that have the Administration of Justice committed to them by the Government, do behave themselves with all Equity and Impartiality towards all the King's Subjects; And the Law has as full and free a Course, and Justice doth every where take place as much as can be desired by any honest and good Man.

Gentlemen, in this Case that you now are to try, I must first of all tell you, that this Business of the Right of Election one way and the other, hath been too much insisted on on both sides. And I speak it, because tho' I my self in my own Mind know what of it is true, and what not; yet I conceive it not so proper to be mentioned in this Case, it being no legal Evidence to the Point in Question. Now it is a Duty incumbent upon you to observe; and upon the Court to suffer nothing to be urged so as to have any weight with you, but what is legal Evidence. That you are only to mind, Gentlemen. So that if I mention to you any Point of Fact that hath not been given in Evidence, as having a true Relation to this Issue, you are not to mind what I say to you about it. On the other side, I must likewise acquaint you, if there be any difficulty in Point of Law in the Case; you are to observe the Directions of the Court, who will be always ready to assist and direct you in it. Or the Gentlemen, that are of Council on the one side, or the other may have the Matter found; specially, if they think there is Fact enough to be found to ground a Question upon.

Therefore, Gentlemen, for the Customs of the City of *London*; as to the manner of Elections, or who hath the right to manage them, they are not at all material to this Business; and if they were, there is never a one of you but know it as well as we or any Body doth. I my self had the Honour to serve the City of *London* in the Places of Common-Serjeant and Recorder several Years: So long ago, that not above one or two that sit upon the Bench in the Court of Aldermen have been longer conversant in *Guild-Hall*, or know the Customs of *London* in those matters better than I do.

It is notoriously known to all that have had any Dealing in *London*, or been acquainted with any thing there, that till within these six or seven Years last past, the Lord Mayor and Court of Aldermen, and the Common-Hall used to go a-birding for Sheriffs, (you very well know what the Phrase means) and perhaps it was not once in ten times, that those that were chosen Sheriffs, held; but generally every Year there were I know not how many Elections upon fining off, or swearing, or some reason or other; so that now and then, there was but one Sheriff chosen for a great while together; and now and then never a one from *Midsummer* day till near *Michaelmas*. And the way was, to consider such a one hath most Money in his Pocket; Oh! then put him up for Sheriff: And then, if he went off, then another would be found out. And there was one old Deputy *Savage*, that used to keep a black Book, that would furnish Names for I know not how many Elections. And who should be Sheriff, so as to divide into Parties, and Poll was never a Question, before such time as Mr. *Jenks* that they speak of came to be put up, and there the Dispute began; then the Faction began to appear.

Now if any Man offers to tell me, I apprehended always it was the Sheriffs Right to manage the Poll; I would ask him how that can be a Right that never was done before; let them shew me any one Instance of a Poll for Sheriffs before that time. No, it was no-

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toriously known when the Polls began, Persons did not think the Shrevalty such an Office, that it was so earnestly to be coveted and desired. Polls indeed used to be heretofore for the Bridge-Masters Places, that are Places of Profit and Advantage; and so for Ale-conners and the like, those have been often in your time and mine, Gentlemen, we may very well remember them. But this Office of Sheriff, People were not heretofore so ambitious of as to poll for it; but the City was glad if they could get any worthy and fit Person to accept of it.

And for the management of the Election, we all can tell the manner of it as well as any thing in the World. After my Lord Mayor and the Aldermen were gone off the Hustings and retired to this Place, the Common-Serjeant staying there with the Sheriffs, used to make a Speech to the Common-Hall, a Rehearsal of what had been before said by the Recorder; and then received the Nomination of such Persons as were to be put to the Question for Election from the Common-Hall. And upon the putting of the Question, every Man held up his Hand for those that he desired should be chosen; and if it could be decided by view of the Hands, well and good; and the Common Serjeant consulting with the Sheriffs and those about him, declared their Opinion, that the Election fell so and so on the one side or on the other; but if doubtful, or a Poll demanded by any one; then they used to acquaint my Lord Mayor what was done in the Common-Hall; and thereupon, they gave Order for declaring the Election, or granting the Poll, and used to come down to the Hustings for that Purpose; and no one ever thought, that either the Common Serjeant or the Sheriffs, or any Body else but my Lord Mayor had the Power of those Courts. For the Common-Hall was always summoned by Precept from the Lord Mayor, and when the Business was done, or was to be put off to another day, the Common-Cryer by Command from the Lord Mayor makes Proclamation, You good Men of the Livery, &c. may depart for this time, and give your Attendance here again such a Day, or upon further Summons. No Body ever talked of summoning a Common-Hall by any Body but my Lord Mayor. He did it by Virtue of his Office, and he dissolved it, or adjourned it by Virtue of his Office. All this is as notoriously known to all Men that know any thing of London, as the Faces of you of the Jury are to the People here, or to one another. And this never came to be a Question, till the Business of the Poll between Sir *Simon Lewis* and *Fenky* came about, which you have heard of. Mr. *Papillon* himself when he was chosen Sheriff before, and fined for it, was chosen in this manner and no other.

Mr. *Cornish*, he comes and gives Evidence that the Common-Serjeant was reckoned to be the Man that managed the Choice by Command and Direction of the Sheriffs. And some of those Gentlemen, that have been produced on the Defendant's side; they say, they have looked upon it as the Sheriffs Business. But alas-a-day it belongs to neither of them, they are but Officers to the Lord Mayor. The Common-Serjeant's Business is but to put the Question into the Mouth of the Common-Cryer. In so much, that when I my self was Common-Serjeant, as I used to pass by the Shops in London, they used to cry there goes, *So many of you as would have*. It was as plain a Road of things, that every Body knew it before these things untowardly have come to be imbrangled by our Factions and Divisions, and the heat of some busie Fellows. Here are a great many ancient Citizens, that I see that know, and so do you all, Gentlemen, that this is true. So that all the Discourse of this Matter is but Flourish and Garniture, and doth not affect this Case at all one way or other.

Another thing, Gentlemen, hath been mightily talked of, and urged and insisted upon both by Plaintiff and Defendant; and that is the Defendant's Right, or not Right of Election to the Office of Sheriff, and that the Majority was on his side, say his Council: On the other side, say the Plaintiff's Council. And for the settling that Right, he brought his Action against the Plaintiff; but it being determined upon the Conviction for the Riot. There is no such thing, Gentlemen, as that it was therein determined: That cannot be a Determination of any Right at all. For tho' I may have a Right to an Office, or any such thing; yet I must pursue a legal Method to attain to that Right, and not go irregular Ways to work.

As if I have a Right to come into your House, because you have not paid me your Rent, (to make my thoughts and meaning intelligible to you by a familiar Instance, which will shew what I intend) I must not make a Riot, and turn you by Violence out of Possession. For I have a legal Course to come by my Right; to wit, by bringing an Action and evicting you. But if any Man attempt to get a Right in an unjust manner, and he be punished for it by an Indictment or Information, that, I say, doth not determine the Question of Right one way or other.

To come then to the Issue, that here you are to try the Point of this Action before us,  
resolves

resolves it self into a narrow compass, and is only this in short, which you are to enquire of, Whether or no the Plaintiff was arrested by the Defendant without probable Cause, and maliciously?

Now matters of Malice, are things that remain in a Man's Heart, and it is impossible for me to discover whether another Man hath a Malice against me; if I do not see it in his Actions. Malice being a thing that is internal, is not else discernable.

Therefore you must consider the Circumstances that do attend this Action of the Defendant, and if so be they are malicious, then you are to find for the Plaintiff: But if they for the Defendant, have offered to you any Circumstances that can prove or convince you, that he had any probability of a Cause of Action, and that not attended with a malicious Prosecution of that probable Cause, then the Issue is with the Defendant.

This is the Right Question, and the Law of this Action; and the Fact to make it out one way or other is now in Judgment before you, upon the Evidence that hath been given on both sides.

Now, in point of Law, I am to tell you, and that you must observe, That though I have a probable conjectural Cause of Action against another Man; yet if to obtain my End in that, I prosecute him maliciously, with a design to ruine him, or to put an Indignity upon him, or the Character he bears in the Publick, or put a hardship or difficulty upon him (I mean hardship and difficulty in point of time) when it is probable the Remedy may be had at another time, and the same thing done with less injury, and less trouble; then an Action will lie against me, for bringing my Action in such a manner; though it be true, that I had a conjectural cause of Action against him.

As in the Case that was here in this Court the other day, of Mr. *Swinmock* against the Sergeant, that came to him and told him in his Ear, that he had an Action against him, and this was upon the Exchange; thereupon Mr. *Swinmock* brings his Action for this against this Man, for whispering this in his Ear: If he had proved any malicious intention to disgrace him, no doubt the Action would have lien. For though there might be a Cause of Action against *Swinmock*; yet if that be maliciously pursued to get him arrested, and held to bail, where no bail is required by Law; or with an intent to disgrace him upon the Exchange, when it might have been done elsewhere, or at another time, this irregular malicious Proceeding will bear an Action. The pursuing malicious ways, to obtain a Right, makes a Man obnoxious to the Action of the Party so prosecuted. I desire to express my self by Words, that may declare my meaning as plainly as can be: And I hope I do so.

Then, Gentlemen, taking it thus as the Counsel for the Plaintiff say, to shew that the Defendant had no probable Cause of Action against the Plaintiff; they endeavour to answer what is alledged on the other side, as their probable Cause. And therefore, that we must consider first what is said by the Defendant.

They tell you, here was an Election for Sheriffs of *London* at *Guild-Hall*, where those Persons that they have nominated, were Candidates, and put in nomination for that Office. And upon that nomination, as say those three Witnesses; we were the Persons that had the Majority of Voices, and thereupon we apprehended our selves Chosen, which gave us the right of Action: So the Defendant say they sheweth some probability of a Cause of Action; and if he have not pursued it with Malice, but in a regular way, the Probability of the Cause doth take off from the Malice, that else the very bringing of an Action without Cause, would imply in it self. And they say true, for I must repeat it again, If I have *prima facie*, a probable Cause, and pursue it legally, no Action will lie against me for it.

But then say they on the other side for the Plaintiff; That is no probable Cause; for you could from those Transactions have no such Apprehensions of a Right; for that is not the measure of a Right of Election, or a Rule to guess who is elected by: For there being no decision of the Election upon the holding up of the Hands, and a Poll being demanded, whereas the usual method is to have by the Lord Mayors Order and Direction, the Poll taken by such as he shall appoint; you went another way to work, you go your ways and take Books to your selves, and come not to the fair determination of the Question: And they bring Mr. Town Clerk to prove. You have heard what the Evidence is, and you are Judges of it.

Now take it that this were in the Case of an Office of Profit; as suppose it were a Question between me and *John a Styles*, for the place of *Bridge-master*, for the purpose, and a Poll is demanded, and granted; if they that have no Authority shall go after the Court is adjourned by him that has Power, and take a number of Names in the way of a Poll by themselves, and upon that come and say, *I. S.* has four and twenty hundred, and I have  
but



but so many ; that sure is not any probable Cause, nor a Right ; for you have gone hereout of the known and usual method of such Matters, and depend upon that which can give no foundation of Right at all. This is the Answer that is given to that by the Council for the Plaintiff.

You may have fifty thousand Names for you after that rate, and yet not be Elected, nor have probable Cause of any such apprehension. We all remember Sir *Samuel Sterling's* Case, which was upon the denial of a Poll for a Place of Profit, that is to say, the *Bridge-Master's* Place : But this is upon a wrong Poll.

Suppose there had been a Poll granted (as there was) in this Case, and upon that Poll thus managed, Sir *Dudley North* and Mr. *Box* had had the majority but by a very few, and there had been an Action brought in such a Case ; here was a probable Cause as good as in this Case, as it now stands, because some of them might happen not to have legal Suffrages ; yet the taking the Poll by Persons of their own heads, after the Court was adjourned, avoids all ; so that that would have signified nothing. You are to consider of this Answer of theirs.

Then the great thing, Gentlemen, that you are to observe, is this : To bring an Action alone, will scarce amount to a proof of Malice ; therefore Malice being in this Issue a great point of Fact, you must weigh the Evidence whether the Circumstances do shew it, that there was Malice in Mr. *Papillon*. If the Circumstances are enough to amount to a proof of Malice, you then are to find for the Plaintiff ; and you are the Judges what Damages it is fit to give him for that Injury : He has laid Tenthousand pounds ; but you must do what you that are Judges of it think fit in it.

Come, Gentlemen, it is best to be plain ; and no Man needs to be thought wanting of an Apprehension, what is the meaning of all these things. It is commonly and universally known to all Mankind,

First, That no Man ever did pursue such an Action as this is, to be Sheriff, till these unhappy Times wherein we are, and wherein we have lost that Quiet and Felicity, which I pray God we may be restored unto. And though it is true, a Man may lawfully sue for such an Office, and it is no Offence ; yet it looks somewhat extraordinary, and that a Man has a mind to do something unusual in the Place ; 'tis for some strange purpose or other, especially when a Man has Fined for the Office once before, as we all know Mr. *Papillon* did.

Again, It is as notoriously known, That for several years last past, the Government hath been beset : And that which is a baser thing than ever was thought of, or acted in the highest times of Villainy in these Kingdoms, (I mean those of the late Rebellion) the very Methods of Justice have been corrupted, and all to serve the main Design of subverting the Government.

Gentlemen, This is so black a Wickedness, that no honest Man that has any sense of Loyalty, Religion, or common Justice, but must tremble at the very thoughts of it : When we see such Fellows as are obnoxious to the Government, known Dissenters from the Establish'd Worship, and that never thought of conforming to the Government, or the Laws Civil or Ecclesiastical, or complying with the Church, but only to capacitate them to destroy it ; nay, when Men that are taken notice of to be common Reproaches to the Government under which they live, shall get into Office to make *Ignoramus* Juries, and to enable People to commit and be guilty of all the Falsities and Basenesses, that Humane Nature is capable of ; no Man living, that has any Ingenuity or Goodness in him, but must cry out against it.

When Men begin to take Oaths to sanctifie Villainy, and enter into Clans and Clubs, and Cabals, to destroy the most Merciful of Kings, and to disturb, distract, and overthrow the best of Governments, What shall we say ? And all this you, all of you, Gentlemen, know to be true. Was it not more safe to commit Treason in the City, than to sit upon a Bench of Justice to bring the Traitors to Judgment ? Was it not more safe to conspire the Death of the King and his Brother, than to give the least Frown or Look of Displeasure against one of these snivelling Saints ? Did not we know that Men were sanctified to be Jury-men, to enquire of Conspiracies against the King's Life and Government, that before that time were never thought fit to be trusted with the common Discourses or Society of honest Men ?

When Men were thought fittest for Offices of such high Trust, according to their being thought capable of, and well-intended to the over-throw of the Government : Do not we all know this to be as true, as that the Sun shines at Noon-day ? When Traitors at the Bar were in less danger of being convicted of their Treasons, than the Judges were of their Lives ?

Mr. *Papillon* knows all this to be true eminently. When pack'd Juries were grown to that

that height, that though seven or eight Witnesses came and swore positive down-right Treason, the Traitor could not be by these Men so much as thought fit to be accused by an Indictment; to that stupidity in Villainy were things brought by these Fellows: Nay, so far were the Proceedings in Courts of Justice tainted, that in no common Action whatsoever that came here to be Tried, but cropp'd Hair, and a demure Look were the best signs of a good Evidence; and the business of an Oath signified nothing, provided the Party were to be prop'd up, and the Faction to receive an advantage by it.

For God's sake, Gentlemen, let any Man but seriously consider and believe that there is a GOD in Heaven, and a dreadful Day of Judgment, when every one of us must answer for every Thought of our Hearts, every Word of our Mouths, and every Action of our Lives; and then tell me what horrid Impieties these are, such as any ordinary ingenuous Person would blush and tremble at.

And I would have Mr. *Cornish* to consider, whether ever till that time of famous, or rather infamous Memory, that he and his Fellow-Sheriff Mr. *Bethel* came into that Office, there were ever in London such things as Tavern>Returns of Juries, or Clans and Cabals how to pack Fellows together for such wicked Purposes as these.

Do not most of you here know this? And doth not every one of your Hearts and Consciences agree with me in it; how far unlike the Proceedings of those times, in reference to Juries, were from what they anciently were? I have had the Honour to practice in this Place among you in my Profession, when without any disturbance or mixture of Faction and Sedition, we were all quiet, and every one knew his Duty; and Justice was done in this place so regularly, that it was grown to a common Proverb, if there were any Cause of any difficulty, they would use to say to one another, *Come, we will be so fair with you, as carry it by a London-jury*. So far was it then from being thought, that in the City of London, Justice should be corrupted, that the Ordinary Juries of London were thought the best Judges, and most impartial of any in the Kingdom. I appeal to all the Practicers of those times that hear me, if what I say be not true.

But when once they had begun to pick and cull the Men that should be returned for a Purpose, and got this *Faction's Fellow* out of one corner, and that *pragmatical, prick-ear'd, snivelling, whining Rascal*, out of another corner, to prop up the Cause, and serve a Turn; then truly Peoples Causes were Tried according to the demureness of the Looks on the one side or the other, not the Justice of the Cause.

Gentlemen, I take my self bound to tell you of these things, and I wish I had no reason for it; and especially in this Case I should not do it; it being a private Action between Man and Man, were it not for the Ingredients that are in the Case, and that any Man that has any sense may perceive.

Now then for this Case before you, Gentlemen, I desire if possible to be satisfied in one thing or two: My Lord Mayor of London, it is true, is not, nor no Person whatsoever, be he of never so great Quality, is exempt from the Law: If he owe any man any thing, he is bound to answer it to him, as much as any the meanest Citizen of London, or poorest Subject the King has: But is he to be arrested just at such a time, because he is Chief Governour of the City, and the Action will found the greater? And the Court of Aldermen, are they to be arrested, because they are his Ministers, and necessary subservient Assistants to him in his Government, in such a time as this was, when the Government both in the City and elsewhere, was surrounded with Difficulties, and in great danger on all sides? What occasion was there for such haste and speed in this Action to be done just then? Would Mr. *Papillon* and Mr. *Dubois* have starved, if this Action had been suspended for a while? Sir William *Pritchard* would have been as answerable to this, or any man's Action, when the year of his Office had been out: But it carrieth Vengeance and Malice in the very face of it; it speaks, that therefore they would do it, because he was then Lord Mayor, the chief Person in the City for the time; and thereby they should affront the Government, in Arresting and Imprisoning the King's Lieutenant; in one of the highest Places both of Trust and Honour. And this would be sure to make a great noise, and the Triumph of the Action would make their Party then to be uppermost, having got the chief Governour of the City in their own Clutches.

Nay, and because they would be sure their Malice and Revenge should take place, they take the very *Scoundrels* of the Party to be employed in this great Work. For before that time, the Coroner (as he tells you himself) used to make his Warrants to the Officers, that usually are versed in that Business; but here he must have the Direction of the Attorney, and who is that but *Goodenough*, a Man we have all heard enough of; and then *Burley* and *Keeling* must be employed; and by whose Advice, but by the *Goodenough's* and *Nelthorpe's*? And all these Rascals, who now stand attainted of Treason, must be fetched in to con-

sult about a fit Man to make an Arrest. And there, they pitch upon this Man *Keeling* for one, who was one of the principal Conspirators in that damnable, hellish Plot against the King's Life, and that of his Royal Brother; but by the Blessing and Providence of Almighty God, was made use of as a great Instrument of preserving those precious Lives, and with them our Government and Religion, and all that is dear to us, which by that Conspiracy was undermined; and I wish we had not Reason to say, and think the Conspiracy still to be going on. But I hope in God, the Government, as established both in Church and State, will always be able to prevail, maugre all Designs, and those that are engaged in them for its Destruction.

Now *Keeling* tells you he scrupled the Employment; No, said he, I desired not to have my Name put in, because I was never concerned in any such thing before, and my Business was of another sort. But then, Mr. *Goodenough* (and Mr. *Brome* the Coroner no doubt had a Hand in it, tho' now he has a very treacherous Memory, and has forgot all that was done) comes and tells him, you must concern your self, and do this thing; for you have a Trade with the Party, and it will be ill taken if you do not do it. And being asked whom he meant by the Party? He tells you, the discontented Party, and he explains their discontent to be such, that they would have killed the King and the Duke. Now how far he was engaged with that Party is pretty well known; and therefore, if he boggled at such a thing as this, which that Party it seems was engaged in, they would suspect him; and so, for the Party's sake he was drawn in.

But then, when this thing is done; 'Pray', Gentlemen, do but consider what the Consequences might have been, and which, perhaps (nay upon what has happened to be discovered, since doubtless) they did design in it. But God be thanked those Consequences were prevented, and they themselves have Cause to be thankful to God Almighty for it. For here all the Magistrates of the City, that had any Care for the good Government of it, were to be taken up; and then, here was a Body without a Head, a Town full of Faction without any Government; and if the heady Rabble had been once up, without those that had Authority to restrain them, where then had been your Liberties or Properties, Gentlemen, or any Man's; Nay, theirs that were engaged in this Design, if they had any, for those were things much talked of by them? In what danger had you, and all you had, for Life, Estate, Relations, and every thing been? But it pleased God in his infinite Mercy to showre down upon us, and upon this City and the Government in a mighty Preservation, putting it into the Hearts of some in Power, to bring the City-Militia some of them together, and prevent this Mischief; or else, God knows, this whole City might have been by this time once more in Ashes, and most of the King's Subjects wallowing in their own and one another's Blood. And their Party too would have felt the sad Effects of it, no doubt, as well as others. So that the Consequence of it was to destroy the Government, and that appears by the Parties being engaged in it; it could not be to gain a Right, to make this Hubbub, and add to arrest the Magistrates of the City; and then take Advantage for some other wicked Purpose.

Another Point of Circumstance, that is considerable in this Case is, the particular Persons that were to be sued. The *Mandamus*, that was directed to the Lord Mayor and Aldermen; and there is a Return made, not by this, or that, or the other Man, but in the Name of them all, the whole Court. How comes it then to pass, that my Lord Mayor, Sir *Henry Tulse*, and those other Gentlemen, must be sued and arrested; but I warrant you Mr. *Cornish*, or his Party, were not to be meddled with: No, he had so much Zeal for Justice, and to do the Defendant Right, that if he should have been called upon to appear, he would not have stood out an Arrest; so just a Man he is, and such a Lover of Right without all doubt; but he was in no danger I dare say, they loved one another too well to sue one another. That I say, Gentlemen, is another Circumstance, that carrieth Malice in it. For I must tell you, these things cannot be smothered, they are as apparent as the Light: And tho' it falls to my turn in this Cause, to enmind you of them; yet, they are as well known to you all, as the Passages in your own Families.

No, Gentlemen, there was not a Pursuit of Right in the Case; it was a designed Piece of Villainy, on Purpose to affront the Government; nay, to destroy it, and set us all together by the Ears. And if he were ten thousand times Mr. *Papillon*, I would and must tell him so; and if it were not for some such devilish End and Purpose, he would never have been so greedy of an Office, he had before declined and fined for; and which he was only called to by a turbulent, seditious, factious Party, that had further aims in it. Otherwise, I know Mr. *Papillon*'s Humour so well, that I am confident, he would much rather have been contented to sit in his Counting-house, than in *Guild-Hall* in a scarlet Gown. Alack-a-day, I know Mr. *Papillon* knows how to spend his time to better Advantage to himself.

Ay,



Ay, but say the Council for the Defendant, we did go on very tenderly and civilly, and respectfully ; for there met at Mr. *Cornish's* House, who I pray ? Mr. *Papillon*, and Mr. *Dubois*, and *Goodenough*, the prime Attorney in this Cause : And there, forlooth, they tell *Goodenough*, be sure you do nothing, but what is exactly according to Law ; and be sure, you carry it very civilly and respectfully to my Lord Mayor, good Mr. *Goodenough*. Alack-a-day, how wonderful pious, and considerate these People are ! If Mr. *Cornish* had gone to my Lord Mayor, as it was his Duty to do, being then an Alderman, (we know it full well) and said to my Lord Mayor, there were such Persons at my House talking of such a matter, and I come to advertize you of it, and desire you would consider of it, he had shewn his Piety and his Zeal, and Love for Justice, much more in that than in admitting such Cabals in his House. But we know very well, as well as if we were in them, that they must go Hand in Hand in all these seditions and factious Businesses.

It is plain, Gentlemen, what the Design was from the Beginning to the End, nothing but to cause a Tumult and Confusion in the City, in Order to put that damned hellish Conspiracy for the destruction of the King and his Brother, and every Man that was honest and loyal in Execution. This is certainly known to you all ; and that there should be such a Parcel of People untowardly linked together in this matter, not one man of which that they can pretend to be in anywise a Well-wisher to the Government, or to any that have any share in it : No, they are all Persons that are obnoxious to the Government that had any hand in it ; but none of them Church of-England-men, or Friends to her Establishment'd Worship ; notorious Dissenters, or profligate Atheistical Villains that herd together.

This, Gentlemen, is plain English, and necessary to be used upon all these Occasions : So that it remains now upon your Consciences, whether 'upon all these Circumstances that have been mentioned, you think the bare obtaining of a Right in a Legal Course, or some worse thing was designed.

We all know Mr. *Papillon* to be a wealthy Man, an able Merchant ; one that had rather have minded his Affairs abroad, or at the Exchange, than the expensive, troublesome Office of Sheriff of London ; but, that something was to be done to wreak a damned malice and Revenge upon the Government. And sure, he must think, as his Party it seems did, that they would not be sufficient to subvert the Government, unless he could get into that Office.

This I tell him openly, and let him or his Party make their Remarks upon it as they please. But you are to Judge whether these things be a sufficient Evidence of malice, to support the Plaintiffs Action.

There was questionless a Devilish Malice fixed in his Heart and Mind, and he wanted an opportunity to effect it, and he thought it for his own security to be best to take this Course, and nothing else was in it. For abundance of People have a Mind to do mischief, but want opportunity and safe ways to do it in : And, Oh they rejoice, if they hit upon a project, that shall carry a specious pretence and colour of Law, for then they think they are safe enough.

As in Case, I have a Mind to do any particular Man an injury in his reputation and business ; the business must not be done down-right, by going to every Body, and saying, such an one is Poor, or a Beggar, and do not trust him ; but I must cunningly and slyly insinuate it, I am sorry for such a Man, I believe he is an honest Man, but however he oweth Money ; and under this sort of *Sniveling, Caming, Whining, Slyrate*, do any Man an injury whatsoever : and yet forsooth he shall have no advantage against me for it : I shall strike a Dart into the very Heart of that Mans Credit, and yet he have no Remedy.

So if I have a Mind to talk against the Government, I will not do it aloud, and speak what I mean openly ; but I will *Whine*, and *Snivel*, and *Cam*, and make People believe I have dreadful Apprehensions of what is designing, and yet not bring my self in any danger ; for I will keep within bounds all the while, though I do more mischief than if I dealt fairly and above-board. Alack-a-day (as Mr. *Pilkington* said) *I am for the Preservation of the Liberty and Properties of the Subject, and I am for the Law* ; but I find the City is strangely run down in their Rights and Privileges, and there are very Arbitrary Proceedings. And I am a Citizen, and have taken my Oath to preserve the Privileges of the City, and I will rather submit to the inconvenience of a troublesome Office, than let all run thus : and immediately he sets himself *Cock-a-hoop*, as if there were no one that took care of the City besides himself, and he were such a Patriot that there were none like him : And he and Mr. *Bethel* and Mr. *Cornish* forsooth, are the only Men of the times, the only good Men ; Men that are for the Liberties and Properties of the Subject, and the Rights of the City : Whereas these are the only Men that have made an Invasion upon them, and done what they could to destroy them ; and God knows, we might all of us have enjoyed very quietly every man

Man his own, if these contesting *Rioters*, and busie *Faction Fellows* had not come among us. Every Honest Man, I tell you, knows this to be true.

Gentlemen, as to the business concerning the damages, that if you find for the Plaintiff, is left to your Judgments to consider of, and give what you shall think fit, upon such an Occasion. It is very true, it is not so easie a matter to ascertain particular damages in such a Case; nor is it in an ordinary way, so easie to prove, that because Sir *William Pritchard* was in Prison but five or six hours there, he could suffer so much damage as comes to ten thousand pounds. As in the Case of a Person of great Quality and Honour, it is not easie to prove his particular damage; nor in the Case of any of you, that are wealthy, able, sufficient Citizens, to say you are a Bankrupt, when we all know it is impossible to be true, and so no particular damage doth ensue, that can be proved; yet however, if the thing for which the Action is brought were designed with Malice, though the ill design be not effected, that is no thanks to the Party, nor is to weigh with you, but the malicious design must govern you.

Now, here I have taken notice to you, that the Malice of this design here, was not against Sir *William Pritchard* as such a particular Man, but against my Lord Mayor, that this Clan that met at *Russell's* was an overflowing of that *Gall* or *Malice* that was in his Heart.

If Mr. *Papillon* had brought an Action upon a Bond only, certainly it had been nothing but what he might very well do; or if he had pretended to sue for a bad Debt, that if he had staid would have been lost, it had been something: But you see what it was, and it is as apparent why it was, in that Mr. *Goodenough* said to *Keeling*, threatening him with the displeasure of the Party, if he did not do it; and Mr. *Goodenough* and Mr. *Brome* were such Strangers to one another, that he must threaten *Brome* to complain of him, if he did not execute his Writs presently. Do they think all Mankind are so dull or blind, as not to see through such thin Artificial stuff as this?

Gentlemen, this is the matter, The Government is a thing that is infinitely concerned in the Case, that makes it so popular a Cause: The Government of the City, the Honour of your Chief Magistrate, and indeed the Honour of the King, whose Substitute he was, is concerned, and that puts a weight upon your Inquiry into the damages of this Case. You are to consider you give damages to the Plaintiff, not as Sir *William Pritchard*, but as Lord Mayor: And your severity in this Case, will deter all People from entering into Clans and Cabals to make disturbances, and affront the Government.

It is a thousand times better to keep within their own bounds, mind their Callings and Employments, and concern themselves with their own Affairs, and leave the administration of the Publick to them to whom it belongs, and is intrusted with. And according as we say in the Law, *Maxime*; so say I to Mr. *Papillon* and all the Party, *Ad Consilium ne accedas antequam voceris*. And do not be scared with imaginary dangers, and groundless Jealousies, into tumultuous and disorderly Courses. You had much better keep in your Counting-House, I tell you again, and mind your *Merchandise*. Nay, and I do not doubt but you would much rather have done so, if there had not been some further fetch in it. It was not, I dare say, out of a frank, generous humor to oblige the City, that Mr. *Papillon* would have spent his time and money in the Office of Sheriff; no, I know he had better ways to employ both.

It was not the Generous mind of Mr. *Bethel*, that called him on to be Sheriff of London, to entitle him to spend his money; but on purpose to be one of the first that should turn all things upside down in the City, and disturb the Government: And they that succeeded him, carried on the Project, and they that would have been in, but could not, had a mind no doubt to follow so Worshipful an Example as he laid before them.

*Then the Jury withdrew to consider of their Verdict, and after half an hours stay, returned, and found for the Plaintiff, and assessed Damages to Ten Thousand Pounds, and Costs to four Marks.*

L. C. J. Gentlemen, You seem to be Persons that have some Sense upon you, and consideration for the Government, and I think have given a good Verdict, and are to be greatly commended for it.

*The Matters of Fact in ELECTION of SHERIFFS,  
in the Year, 1682. Faithfully reported, and the  
Miscarriages of Sir JOHN MOORE, then LORD  
MAYOR, and some other Persons in this Matter,  
briefly declared.*

**T**HE open and bold Invasiō made upon the Liberties and Franchises of the City, and that attended with a Contempt of the Laws of the Land, as well as the ancient Customs and Usages of the Corporation, doth not only serve to justify our complaining of the Rape committed upon the Rights and Privileges of the Free-men of London; but invites us to detect and lay open the unreasonable, as well as illegal ways and methods, that have been taken for the overthrow of whatsoever we enjoy, either by Law, Prescription, or Charter. For as the electing of Sheriffs is granted by Charters, and confirmed by divers Laws to the Citizens of London; so the conducting the Election, and declaring upon whom the choice through the majority of Votes does fall, hath time out of mind appertained unto, and been claimed by the Sheriffs. And tho' the Common-Hall be not properly a Court, save for the punishing my Lord Mayor and Aldermen, when they transgress against the Duties of their Places, and the Trusts reposed in them; yet not only the Right of electing Sheriffs is in that Assembly and Convention; but the Power of appointing the manner in which they will have the Election managed, does entirely reside in the Members, who constitute that great Convocation: Yea, so far is my Lord Mayor from having, either a Negative upon the Hall, or a Right to prescribe unto the Citizens whom they shall chuse, that he hath not so much as Power and Authority to take the Suffrages of the Electors, or to adjourn or dissolve the Hall, without the leave and consent of the greater Number of the Free-men, then and there present. And as all this hath been declared, and irrefragably demonstrated in several Papers already published; so it hath been affirmed under the Hands of as good Lawyers as are in England; and particularly of those Gentleman whom the City have thought worthy to be entrusted in the defending their Charter against the *Quo Warranto*, put in for the seizure of it.

But in defiance of all that hath been said, such is the easiness of my Lord Mayor (to say no worse) that he hath suffered himself to be prevailed upon to despise Law, violate Charters, and act in direct opposition to the Duty of his Place; and all this, for the gratifying of those, who have not only commenced a Suit for the subversion of the Corporation; but openly profess'd, that they seek the Destruction of its best and most honourable Members. And as the recounting the chief Heads of the matter of Fact is indispensably necessary for the Information of the present, as well as future Ages; so the bare rehearsal of those things, will fill the World with Amazement; as well as proclaim the Guilt of some Persons, both to this and following Generations.

And that which offereth it self first to our notice, is the Accession of some *Ministers* to my Lord Mayor, to procure him to drink to Mr. *North*, which his Lordship without the least Consideration of that Gentleman's fitness for the Place, or any attendance to the Design in subserviency whereunto that motion was made unto him; First, tamely complied with, and afterwards performed, notwithstanding the consequences which would thereupon ensue, were faithfully represented unto him.

The next step which his Lordship took in Pursuance of the like Advice, was to run counter, not only to ancient usage, but to an Act of Common-Council 7 *Car. I.* in sending for Mr. *North* and making him seal a Bond to hold Sheriff for the Year ensuing, before he was so much as named or proposed to the Common-Hall, that was not till *Midsummer-day*, which was some weeks after my Lord Mayor had caused him under the forfeiture of 1000*l.* to undertake to serve.

The third Advance made by Sir *John Moore* against the Duty of his Place, and the Customs of the Corporation, was his altering the Form of the Precepts for the summoning the Common-Hall against the 24<sup>th</sup>. of *June*. And it is remarkable, that whereas not only by the



Charters, the Citizens are to meet to chuse annually from among themselves Sheriffs; but that all former Precepts run in a strain, importing their being to assemble to elect Sheriffs; the present Mayor did by an unprecedented and arbitrary Power, summon them to convene, to confirm one Sheriff whom he had drank unto, and to chuse another.

Nor could his Lordship stop his Irregularities here; but both after a Declaration, upon whom the Election had fallen through the majority of Hands, and after the Poll which had been demanded, and wherein himself had acquiesced, was peaceably and fairly carrying on, he came attended with a Company of Men, whereof many were not Free-men, divers were armed with Swords, and several were known Papists; and not only interrupted the Poll, but contrary to Law and Right, assumed to himself a Power of adjourning the Hall.

And having thus far embark'd in sinistrous and unjustifiable ways, his next Proceeding was partly by himself; and partly by Citizens, whom he countenanced to misinform his Majesty, and contrary both to Truth and his own Knowledge, to abuse the King, in causing him to believe, that divers peaceable Persons had been guilty of a Riot; upon which mis-report, as the two present Sheriffs were committed to the *Tower*; so, the principal blame of it must be imputed to his Lordship. And as it is the first instance on the File of History, of Persons being indicted of a Riot, when lawfully assembled together, and quietly proceeding in that which they met about: So, I question whether our Law-Books furnish one Example of the Council-boards committing two Officers, whose Place and Duty it was to manage the Poll, and govern the Assembly, not only without the hearing of any to speak in their behalf; but in a Case, the Cognizance whereof belongs to the Courts of Common-Law.

But his Lordship's Illegalities hitherto had been both ascribed to the ascendancy which some had gotten over him, and had been easily pardoned, had they terminated here, but it seems he was too far engaged to retreat; and therefore, his next Step was to take upon him, contrary to Sense and common Reason, as well as Law, to adjourn the Common-Hall, *July 5th.* not only by a Gentleman, who being no Free-man, could not be substituted his Lordship's Deputy, or *locum tenens*; but by Words signifying only a desire that they would adjourn, which did not import the adjourning of them; but left it to themselves, whether they would do so, yea, or not. And accordingly the Hall, without whose Consent they cannot be adjourned nor dissolved by any, till they have finished the business about which they are assembled, not only refused to be adjourned, but required the Sheriffs to go on with the Poll. Which as it was managed with all Prudence, and not shut up till after more than usual and due Proclamation; yet his Lordship would not rest satisfied with what was then done (merely, as is to be supposed, because the Election fell upon Mr. Papillon and Mr. Dubois) and therefore obtained an Order from the King for a new Hall. For missing what he had designed, in getting the present Sheriffs turned out by a Convention, intended to have been made up of one Party of Men (which would have been called a Common-Hall) had not other Citizens upon smelling the Project assembled without Warning, he had no other Retreat left; but to apply to his Majesty for an Order to begin again. And tho' we have nothing to say concerning his Majesty's Order, save that the printing it for C. R. by which, Persons upon the first view are apt to think they meant *Charles Rex*, did not express that Veneration for Majesty as is fit; yet, we must take the liberty to charge my Lord Mayor, That after he had so often interrupted the Election, and broken in upon the freedom of the City's choice, he did at last labour, and as much as in him lay, compass the dissolving and cancelling of an Election that had been duly made.

To this we may add his Lordship's refusing to hear divers Citizens speak, when the Hall first assembled on Friday morning, and he was upon the *Hustings*, tho' it be his Duty to hear every man that hath any thing to offer, and it be their Right and Privilege to say whatsoever they will, provided it be agreeable to the matter before them, and within the bounds and compass of Law.

Nor can there be a greater Evidence of the unreasonableness both of the Faction whom his Lordship hath espoused in this whole matter, and of his Indiscretion in heading such a violent sort of men, than their refusing to suffer an *Act of Parliament* to be read, tho' often proposed so to be; and this, after the whole Hall had hearkened to the reading of His Majesty's Order, with the greatest Respect, and profoundest Silence imaginable.

And in the next place, how can my Lord Mayor answer either to God or his own Conscience, in keeping so many thousands together from nine in the morning, till past six in the evening, when divers contracted sickness, and some lost their lives, by reason of the excessive heat, without coming to a resolve in himself, whether he would acquiesce in the Election that was declared on Wednesday before, or whether he would insist either upon a new Poll, or plead his having chosen one Sheriff by drinking to him, and that all which he would allow the Commons, was to elect another.

However,

However, as we may understand the capacity of the man, by his having his Gown many times on, to come down upon the *Hustings*, and pretend to adjourn the Hall, and as often off, as willing to rest contented in the choice of Mr. *Papillon*, and Mr. *Dubois*, which the Sheriffs had declared two days before, with all the wonted solemnity; so his sending for Sir G. *Jeffreys*, and Mr. *Saunders*, known Enemies to the City Rights, and professedly for the overthrow of the Charter, to advise him, and his submitting to their Opinions, which they durst not subscribe, against the Judgment, as well as the irrefragable Reasons of the Recorder, Mr. *Pollixfen*, and Mr. *Williams*, who signified their readiness to put their hands to what they said, are things which he will not be able to account for, either before a Parliament, or at the Bars in *Westminster-Hall*.

And what will the world think of his taking his last resolution from a Letter which he received from a Minister of State, seeing as it is an high offence against the Statute of *Westminster*, 3 Ed. 1. to interpose in, or disturb the Election of any Officers; so it is a high offence against the trust reposed in him, and the integrity of a Lord Mayor of *London*, to take any other measures, than what are agreeable to the safety and welfare of the City.

And though we want a name whereby to call his Lordship's retracting his word, after he had consented to the having the Poll go on anew, for two to be chosen out of the Four who had been named; yet we question not but to see a Judicature in *England*, that will both know by what Title to stile it, and to call him to an account for renouncing all Faith, as well as Justice. For it is observable, that he had not only agreed on *Friday* night, to have the Poll proceed for the Election of Two out of Four, but he renewed his agreement as to that particular, to divers worthy Citizens, on *Saturday* morning. But what shall be said of a man who upon the coming of Sir L. J. receded from his Word, as well as from Law and City-Custom. Yea, it is no small aggravation of his Crime, that he re-assumed the pretence of his having chosen one Sheriff by virtue of his Prerogative, after he had heard the Secretary affirm, that they must take that course, though *rueret Caelum*, all things should run into confusion. And should his Lordship's memory fail him, either as to the Polls being demanded for all Four, or as to his granting it, there are several Persons who are able to remember it, and whose words are beyond all suspicion of falshood.

The next thing whereof we may justly accuse my Lord Mayor, is his usurping the managing of the Poll, not only against Law and Usage, but when the Common Hall had devolved it upon, and lodged it in the Sheriffs. For such was the modesty of those worthy Gentlemen, that they would not undertake it, tho Custom would have justified them in doing so, till they had consulted the Hall, and been empowered by them, as those in whom the Authority does reside over all Affairs which come before them. Here is an Arbitrary Power with a witness, not only to claim what his Ancestors never did, and which constant usage directly gainsays, but to do it in opposition to the Vote of three parts in Four of the Hall, who entrusted the Sheriffs with the taking the Suffrages, and declaring the Election.

And as he who engageth once in illegal courses, knows not where he shall stop, so his Lordship having advanced thus far without fear in himself, or Law to countenance him, proceeded farther in taking the boldness to declare Mr. N. Sheriff, not only without his being confirmed, but when 2414. Citizens had expressly declared and polled against his Confirmation.

Nay, as if this had not been the height of Extravagancy, his Lordship pretends to declare Mr. Box Sheriff, tho he had not 1400 Hands; whereas Mr. *Papillon*, and Mr. *Dubois* had upwards of 2400 in the Sheriffs Books, besides some hundreds that polled for them in those that were stiled his Lordships. So that he hath robb'd the Freemen of the Right of chusing both the Sheriffs; and instead of proposing only one to them, whom they may confirm or not, as they see good, he hath by an arbitrary, and illegal power, assumed unto himself the imposing two upon them, against their Will and Consent.

It were needless to recount all my Lord Mayor's Miscarriages in this Affair; such as not only his denying divers worthy Citizens who were for Mr. *Papillon* and Mr. *Dubois*, access unto him, when his house was free and open to those of the contrary party; but the suffering several of the best quality to be affronted and assaulted, if not in his very presence, at least within his gates. And as if it had not been contrary to the duty of his Office as well as the Wisdom of a Man, to give up himself implicitly to the Government and Conduct of Sir L. J. he not only permitted that Person to be present, at his discourse with several Freemen, that came to him about the Privileges and Franchises of the City; but he connived at and allowed that Minister, in checking and rebuking some Gentlemen, who had the courage in his hearing, to claim their Rights.

Surely, as his Lordship hath taken no notice of what befel Sir *Samuel Sterling*, and Sir *Edward Bromfield*, for Offences not near so heinous as those he is guilty of, so he never read of

*Knighten.* one Sir *Nicholas Brember* Lord Mayor of London, that was condemn'd to be hang'd in *Richard* the 2<sup>d</sup>'s time, and with much ado upon the King's intercession, had the favour to be beheaded; and this for neglecting the duty of his Place, and acting conformably to the dictates of Court Ministers, particularly for undertaking at the pleasure of the King, to be Mayor without the consent, and against the will of the Citizens. And as this may instruct Sir *John Moore* what he may in due time expect; seeing the imposing such Officers as Sheriffs upon the City, not only without the concurrence, but against the Declaration of the Free-men, is a much greater Crime than the serving Mayor at the Command of the King, without their consent; so it may forewarn Mr. *North* and Mr. *Box* what is likely to befall them, if they take upon them the Office of Sheriffs against the Will of the Citizens. For if King *Richard*'s requiring Sir *Nicholas Brember* to hold Mayor without being duly Elected, could not save his Head from the Block, much less can Sir *John Moore* calling these Gentlemen forth to the Office of Sheriffs, protect them from the Punishment to which by the Law they shall be found liable for so doing. And as they will be bold Men that will undertake the Office of Sheriffs upon the bare Authority of my Lord Mayor's word; so I know not how the present Sheriffs can resign the Gaols, &c. unto such persons who pretend to the Office of Sheriffs by no better Right.

Nay, I will be bold to say, That should my Lord Mayor and the Court of Aldermen have the confidence to swear Mr. *North* and Mr. *Box*, on *Michaelmas* Eve, that the Common-Hall may Vote them out, and chuse others in their Room on *Michaelmas*-day.

But it is pleasant to observe how this pretended Election of *North* and *Box* for Sheriffs, against the ensuing Year, works already with the Papists and our *Masquerade Protestants*: for they not only begin to talk of blasting the belief of the Popish Plot, but of Hanging Protestants by Wholesale. And whereas Mr. *Duncomb* was contented a few days ago, with the Lives of 9 or 10; nothing less will now serve them, than the destroying of Scores, if not Hundreds, and this within the compass of *London* and *Middlesex*.

However, this we have to rely upon, that whereas Mr. *North* had only 107 hands, and Mr. *Box* 1353 in all the Books, Mr. *Papillon* and Mr. *Dubois* had upwards of 2700 Hands a piece, reckoning in my Lord Mayor's Books with those of the Sheriffs, and were Proclaimed to be duly Elected by the proper Officers.

And as we cannot think that the King will connive at so unjust a thing, and which so directly subverts all the Laws, by which he hath sworn to Govern; so we are assured that the Judges in his Majesty's Courts, will esteem no punishments severe enough, as well for them that shall act as Sheriffs by no better Warrant, as for him that hath taken upon him to declare them for such, against all Law, as well as President.

And as my Lord Mayor may be already sensible, how his Fellow-Citizens resent his late illegal carriage and behaviour towards them, by the many Actions entered against him, to which they have demanded appearance, so he will find, that all that is hitherto done in order to right themselves, and chastise his usurpation upon their Franchises, is but like a few drops before a storm, in comparison of what he must afterwards look for.

Nor must Sir *J. E.* and Sir *W. P. &c.* think to escape being called to an account, nor only for abetting the Mayor in all these Invasions upon the Privileges of the City, but for exciting him unto, and hurrying him upon them. And as it is evident what esteem they have of his Lordship, by using him as a Tool to do such unjustifiable and enormous things; which, were they themselves in the Chair, they would neither have the boldness nor indiscretion to attempt; so their thus managing a Person whom they stile their Friend, as well as one to whom they are bound by their Oaths to give safe and good Advice, rendreth them Offenders against Truth, Justice, and the Rules of Friendship, as well as against the Rights of the Corporation, and their own Oath.

And as for other Officers, they ought to reckon themselves accountable, as for other misdemeanors in this Affair, so for disobeying their Masters in refusing to pronounce and proclaim what the Common-Hall, whose servants they are, required and commanded them to do. And should the Commons of *London* quietly digest, and overlook the disobedience and obstinacy of these Fellows whom they have raised and made, I will say that they have not only forgotten their Authority, but that they deserve to be ridden and trampled upon by their meanest Officers.

P.S. The after Proceedings of making Sir *Pet. Rich* Sheriff, with the method used in Swearing him, and Sir *D. North*, into that Office; the Hustings in *Guild-Hall* being guarded by a Company of the City Trained Bands under the Command of Lieutenant-Colonel *Quinley*. This, and much more of that Days Transactions is too notorious to be forgotten, or that it needs at large to be again related. Yet the Reader may remember from this illegal Election issued the Death of those excellent Persons, the Lord *Russel*, Col. *Sidney*, &c. and the designed Ruine of that worthy Citizen *Tho. Papillon*, Esq;

F I N I S.



